

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

AARON WILSON GARNER

vs.

BP AMOCO CHEMICAL COMPANY
BP AMOCO POLYMERS, INC.,
BP CORPORATION NORTH
AMERICA, INC.

.

.
. G-07-CV-221
. GALVESTON, TEXAS
. DECEMBER 1, 2009
. 8:36 A.M.

TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE KENNETH HOYT
UNITED STATES DISTRICT JUDGE
DAY 1 OF 13

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Proceedings recorded by mechanical stenography, transcript
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14 ALSO PRESENT:

15 Ken Panozzo

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1	<u>INDEX</u>	
2		<u>PAGE</u>
3	<u>PLAINTIFFS' WITNESSES</u>	
4	Teresa Dobbins	
5	Direct Examination by Mr. Buzbee	236
6	Cross-Examination by Mr. Galbraith	252
7	Redirect Examination by Mr. Buzbee	263
8	Paula Jowell	
9	Direct Examination by Mr. Buzbee	266
10	Cross-Examination by Mr. Galbraith	279
11	Redirect Examination by Mr. Buzbee	289

12 - - - - -

P R O C E E D I N G S

(Jury panel not present)

THE COURT: Good morning. Please be seated.

MR. BUZBEE: Good morning, sir. How are you?

THE COURT: Please be seated.

All right, gentlemen. How you-all doing this morning?

MR. BUZBEE: Well, we're surviving it, your Honor.

THE COURT: Well, better to have an inside job, isn't it?

MR. GALBRAITH: Most days.

THE COURT: That we're not working on the highways and stuff like that, it's not so bad.

MR. BUZBEE: That's true.

THE COURT: All right. While we're waiting on a count, do we have any members -- anybody in the courtroom who has been called to jury duty? Anybody in the courtroom on jury duty?

All of these are your witnesses and/or your witnesses and spectators, I gather.

MR. BUZBEE: Yes, sir.

THE COURT: All right. Good deal.

All right, gentlemen. Let's see. I had planned to issue an order regarding some of the issues that we had discussed.

08:37 1 Am I coming through? I can't really tell if
2 I'm --

3 MR. BUZBEE: I can hear you, but I don't know if
4 you're --

08:37 5 THE COURT: -- projecting or not.

6 MR. BUZBEE: -- on the mic.

7 THE COURT: If I'm on -- I'm on now, I guess.

8 MR. SIMON: I can hear you, your Honor, but not on the
9 system.

08:37 10 THE COURT: You're not hearing me on the system?
11 See if there's something there.

12 MR. BUZBEE: This one is working here. Do you have a
13 switch here, like this one?

14 THE COURT: Oh, there we are. I'm coming through
08:37 15 really clear now. I think too clear. Yeah, that's the control
16 there, Diane. Thank you.

17 I think that there were some matters that we
18 needed to take up now, while we're waiting on our count from
19 the panel, that I did not address -- I did not put in a
08:38 20 particular order. But I'll state what I have here from my
21 notes, and we'll see what remains.

22 There was pending the defendant's motion to
23 exclude the supplemental report and opinion of the plaintiffs'
24 expert Donald S-C-H-A-G-L-E-R [sic], "Schaezler," I believe --
08:38 25 or "Schaezler." I believe that's Instrument Number 172 in our

08:38 1 docket entries. And that -- that motion is going to be denied.

2 It appears -- and I'm just reading from my
3 notes -- that defendant's argument is that the supplemental
4 opinions are based on, number one, the Armstrong test, which
08:38 5 had to do with one mask, and that -- and that mask was
6 improperly preserved and, therefore, the underlying data is not
7 reliable.

8 The Court is of the opinion that the test
9 demonstrates that the chemical release occurred -- and I
08:39 10 believe that's the notice aspect -- and I say to the extent
11 that a jury believes it -- that the opinion relies on other
12 factors -- that is, the ultimate opinion relies on other
13 factors, other than the Armstrong test. And the Court is,
14 therefore, of the opinion that the Armstrong test is not fatal
08:39 15 or -- and the fact finder may determine that it has some weight
16 and then determine what weight, if any, to give to that -- to
17 that -- the opinion of Schaezler.

18 How do you pronounce his name?

19 MR. BUZBEE: "Schaezler."

08:39 20 THE COURT: S-C-H-A-E-Z-L-E-R.

21 MR. BUZBEE: Yes, sir.

22 THE COURT: "Schaezler"?

23 MR. BUZBEE: Yes, sir.

24 THE COURT: All right. As well, there were pretrial
08:39 25 rulings previously made in this case -- and I think I might

08:39 1 have stated this at our previous hearing, that the pretrial
2 rulings that were made, I believe by Judge Gilmore, when those
3 are combined with the motion to revisit that I authorized Judge
4 Froeschner to do, when you look at those together, all of those
08:40 5 pretrial rulings previously made in this case will be sustained
6 as relates to your motions in limine.

7 Now, that doesn't mean that those matters are not
8 evidentiary -- from an evidentiary perspective, significant and
9 that you should not seek to offer into evidence what you
08:40 10 believe to be relevant and proper evidence within the context
11 of the evidence as it's being developed. Because I'm not
12 really sure where that will go at this point.

13 So, the Court reserves the right to revisit those
14 evidentiary rulings in the context of the evidence. And if I
08:40 15 determine that our rulings have been erroneous, the Court will
16 certainly make the modifications or changes.

17 The pretrial rulings regarding other incidences,
18 including those allegations of criminal charges, the -- the
19 plaintiffs' counsel has argued that -- that the character of BP
08:41 20 is in question, I gather, relative to the criminal conviction.

21 I'm not sure if that was criminal or civil or how
22 it was fashioned. Was it a criminal --

23 MR. BUZBEE: Criminal.

24 THE COURT: -- criminal determination?

08:41 25 All right. And, so, the question of whether or

08:41 1 not that criminal conviction is admissible, to some extent
2 should be driven by the -- by the same standards as those
3 standards that would be admissible under the circumstances
4 where an individual is either the plaintiff or the defendant in
08:41 5 the case and -- and would then find himself or herself facing a
6 credibility issue.

7 I think the way to deal with that is by
8 instruction. And I'm not sure -- I talked originally about the
9 bifurcation of this case, but I'm not sure that I can actually
08:42 10 bifurcate this case in a way that would not essentially be
11 reversible error at some point. If I'm going to commit error,
12 I guess I need to commit it so that it's plain and clear.

13 Because to try to carve the case or fashion the
14 evidence in a certain way seems to me to set myself up for an
08:42 15 opinion, assuming that one side or the other disagrees, from
16 the Circuit Court, that would never really get us to the point
17 where we have a final determination.

18 So, I'm concerned about what evidence ought to be
19 admitted; but I'm also concerned about limiting evidence to the
08:42 20 point that we don't know or a jury cannot make a determination
21 based on that evidence. So, all of that to say this, that I
22 think that bifurcation may be appropriate in some respects but
23 I'm not sure at this point that I want to do that.

24 I've still -- we still have to qualify this jury
08:43 25 to receive and determine, if any -- if appropriate, punitive

08:43 1 damages. And that's on the front side, irrespective as to
2 whether it's bifurcated or not. So, again, I reserve the right
3 to -- to determine, within the context, what the evidence ought
4 to be. And we're talking to some extent about what the
08:43 5 plaintiff has presented as substantially similar kind of
6 testing. That's really the area we're talking about.

7 Here's my concern. Mr. Galbraith, you indicated
8 that if the plaintiff is permitted to go into this area that
9 that opens up a Pandora's box and now you've got to try each of
08:43 10 these, quote, "releases," let's call it. My concern is this,
11 that plaintiff has based some of his -- seems to me the
12 majority of his case on instances where BP has said there was
13 no release or that there was no indication of a -- of a --

14 MR. GALBRAITH: Source.

08:44 15 THE COURT: -- source. If there is -- if that's BP's
16 position, I'm not sure that there is a basis for, quote, the
17 trial of each of these instances. There certainly could be
18 testimony and cross-examination as to what BP understood. You
19 could certainly be -- BP could certainly say, "Well, we
08:44 20 received a report, but we don't have a -- we could not confirm
21 a source. We have the report, but no source or -- and,
22 therefore, we're obligated to report these incidences or events
23 irrespective as to whether or not we can identify the source."

24 I think that's the lay of the land, it seems to
08:44 25 me. And I'm not sure how much proof is appropriate there. I

08:44 1 think that what I would say and what I would like to do is
2 this, limit the plaintiff to those instances where there is
3 a -- there has to be testimony, it seems to me, that there has
4 been, as in this case, as alleged by the plaintiffs, a source
08:45 5 and that that source, in their opinion, is BP and that source
6 is identified, I believe, to a particular area in that plant.

7 And the question is whether or not the evidence
8 should be limited to other events in that particular plant
9 area. And I don't know -- I'm not -- I don't know the
08:45 10 definition -- that is, I don't know what the parameters of this
11 location is in relationship to the whole of the plant. The
12 question is whether or not those -- whether or not the
13 plaintiff should be limited to events that occurred within that
14 framework, within that particular plant.

08:45 15 And I believe -- I believe the plaintiff has
16 identified that as -- let's see if I got it for the record, a
17 name for it -- the Pipestill 3B, I guess, area. That's my
18 leaning, that plaintiff should be permitted to put on evidence
19 of events that occurred before the April 19 I believe event,
08:46 20 that are particularly identified as events occurring in that
21 area, whether they are confirmed or not by BP.

22 There's a concern about notice and opportunity
23 there, and I think that's appropriate. In terms of just simply
24 the overall plant, I'm not sure that that's relevant to the --
08:46 25 to the case, except plaintiff argues that this is a -- I guess

08:46 1 in way, that this is an attitudinal problem; that is,
2 attitudinal in the sense -- in the sense that BP has taken a
3 position apparently or at least rests itself in the position
4 that -- in such a way that there is no distinction between the
08:47 5 way it treats events in one place and events in another and
6 simply just waits on an event. I think that's what the
7 plaintiff would say, "They wait on an event and they go in and
8 they repair it. They don't -- there's no proactive effort on
9 BP's part." That's part of what is being argued.

08:47 10 So, tell me, Mr. Galbraith, what evidence are you
11 talking about putting on in terms of, quote, proving I
12 gather -- or evidence of proof that -- that these events did
13 not occur or not as reported?

14 MR. GALBRAITH: Well, first thing I wanted to say,
08:47 15 your Honor, is that for two years we have been repeatedly
16 told -- you mentioned prior rulings. We have been repeatedly
17 told for two years that what we are trying here today is
18 April 19th, 2007, what is in plaintiffs' petition, and nothing
19 else. We have been told that repeatedly by the courts.

08:48 20 And we still don't have this other incidence that
21 you're referring to, in my mind, identified. So, we don't know
22 exactly what events we're defending against because for two
23 years we've been told, "You don't have to worry about those.
24 We're trying April 19th and April 19th only." And, quite
08:48 25 frankly, I don't think I'm in a position -- I need to put it on

08:48 1 the record. I don't think I'm in a position now to defend now
2 a sudden change in the scope of discovery, a sudden change in
3 the scope of evidence that this jury may hear, without now even
4 yet knowing what events I'm being called upon to defend.

08:48 5 The second thing is that the law says that for
6 another incident to be admissible -- Rule 404(b), the Federal
7 Rules -- it must be substantially similar. That case law says
8 substantially similar in time, geography, and detail. And
9 there are cases that we have cited in our briefs that led to
08:49 10 those prior rulings, that say you have to show it was a common
11 product or it was a common piece of equipment that failed, not
12 necessarily a unit, which is a city block.

13 Anything that happened prior in a city block area
14 does not necessarily, in our minds, at all satisfy the
08:49 15 requirements for similarity. What could happen in a city block
16 where you live could -- there's a million different things that
17 are dissimilar that could cause a fire or that could cause an
18 odor or that could cause anything. That's certainly the case
19 in the BP Texas City refinery.

08:49 20 You don't have similar just because you restrict
21 it in geography to Pipestill 3B Unit, which is a city block.
22 The other thing is, in time, what timetable; and we still don't
23 know what timetable is arguably relevant to us defending
24 ourselves.

08:50 25 My concern, your Honor, is that it's awfully late

08:50 1 to switch horses in midstream. As you said in our last
2 hearing, "I'm not sure we're trying what you think we're
3 trying. We're trying April 19th" were, I believe, your words
4 at our last hearing. That's what we're prepared to do. That's
08:50 5 what we've been told we need to prepare to do.

6 THE COURT: Let me just step in here. I had the
7 opportunity certainly to do some reading since that time and to
8 come to -- hopefully to some appreciation for what the
9 plaintiff is seeking to do. And it's not my opinion that the
08:50 10 plaintiff is trying to prove similar events in the sense of a
11 particular kind of leak, like a pipe 300 leak, "We've had 20
12 pipe 300 leaks." That's not what I think the plaintiff is
13 doing.

14 Based on what the plaintiff says in their
08:50 15 requests for admissibility of various areas or various matters,
16 is that the like or similar events that the plaintiff seeks to
17 present have to do with lack or no maintenance. So, when we're
18 talking about 404(b) material, we're not just talking about a
19 specific event that we can put our hand on. Just as in a
08:51 20 criminal case, a person who commits a bank robbery today and
21 commits some other crime tomorrow and then commits another
22 crime the next day, and these are not all bank robberies,
23 doesn't mean that there's not a pattern of conduct involved
24 here. That's what we're talking about.

08:51 25 That's what the plaintiff is saying, this is a

08:51 1 pattern of conduct: poor maintenance, insufficient training,
2 faulty equipment, improper use of equipment. That doesn't have
3 to do with a particular piece of equipment or how a particular
4 piece of equipment failed. It has to do with an attitude, as I
08:51 5 said earlier; that is, a course of conduct that suggests that
6 BP is not really interested in maintaining the plant in a safe
7 manner. So, that is the similarity of conduct.

8 Now, how do you prove that? You can prove
9 similarity of conduct by showing that events occurred
08:52 10 sequentially or over and over again in a particular area, that
11 it's -- it's not maintained or that it is maintained in a poor
12 manner or that the equipment is not really fully repaired when
13 it's repaired, I mean, any number of things that -- and it
14 would not require and does not require a trial on every event
08:52 15 that occurred.

16 We're talking about testimony about events that
17 were documented by somebody, whether they were -- whether the
18 source could be identified or whether the specific gas could be
19 identified or not.

08:52 20 So, I think when we talk about like or similar
21 conduct or similar -- substantially similar events, it seems to
22 me that the -- that the determination that I need to make for
23 404(b) purposes are not whether or not there were pipe leaks on
24 the same pipe. That's not really relevant at all, at least
08:53 25 from my perspective, if you're talking about looking at a

08:53 1 historical picture.

2 What I would be concerned about for similarity is
3 whether or not like or similar conduct gives rise to these
4 particular events. And that's what the plaintiff has indicated
08:53 5 in their papers as I understand it.

6 MR. GALBRAITH: If I could respond, your Honor, the
7 concern that I have with that is these particular events. And
8 what I believe is allowable pursuant to the law and Rule 404(b)
9 is that you could show -- what I believe the law says is that
08:53 10 you could show a lack of maintenance led to this pump seal
11 failing over and over and over and over again. That's the same
12 source --

13 THE COURT: That's one way.

14 MR. GALBRAITH: -- of the event of April 19th, 2007.

08:53 15 THE COURT: But that's one way to show it, that the
16 same seal failed.

17 MR. GALBRAITH: Right. But my point is you can show
18 faulty maintenance or a course of conduct but it has to be a
19 course of conduct resulting in substantially similar, quote,
08:54 20 other incidents, close quote, before the law will allow them
21 into evidence.

22 My understanding is that you can do that if you
23 know the source of this one and you can show that these others
24 that reportedly establish this pattern were substantially
08:54 25 similar. If they're not substantially similar, the law seems

08:54 1 to me to say there is no pattern, there is no pattern you can
2 show.

3 THE COURT: Well, when we're talking about course of
4 conduct, counsel, we're not talking about a particular pipe.
08:54 5 We're talking about people.

6 MR. GALBRAITH: No. I agree we're not talking about a
7 particular pipe. But I think the law says the incident, the
8 event, has to be deemed and shown to be substantially similar
9 before it can be a dot on the scale, a blip on the Richter
08:54 10 Scale so to speak, a data point to show a course of conduct.

11 I believe that's the law. I believe that's what
12 the other judges have said. I believe that's what heretofore
13 has been said, that you -- to show this course of conduct, this
14 pattern, you have to know the source of this one and show that
08:54 15 these other events are substantially similar.

16 THE COURT: Well, if they know the source, if
17 everybody knows the source, we wouldn't be here. See, that --

18 MR. GALBRAITH: I agree.

19 THE COURT: -- that problem would have been resolved.

08:55 20 MR. GALBRAITH: I agree. If everybody knew the
21 source, we wouldn't be a defendant.

22 THE COURT: Well, maybe not. But the point I'm
23 making, though, is that that's not something I need to know;
24 that's something the jury needs to decide.

08:55 25 MR. GALBRAITH: Well, the plaintiffs assumed that

08:55 1 burden when they filed their petition.

2 THE COURT: Well, and they're permitted to put on
3 evidence. They've got to be able to put on evidence. Whether
4 the jury believes it or not and whether or not it makes sense
08:55 5 or not, they have to be able to put on evidence that this was
6 the source of this event of April 19. And that's what they're
7 going to present to the jury.

8 Now, once they present that evidence of the
9 source, the question is whether or not that source is
08:55 10 indicative of a course of conduct that BP has engaged in
11 historically. It doesn't matter whether that pipe was the same
12 pipe or whether or not that particular kind of leak occurred or
13 whether or not that particular gas that somebody might claim
14 was emitted was released.

08:56 15 So, there is a -- there is more than one way for
16 a course of conduct to be determined, and course of conduct is
17 not determined necessarily by people engaging or the events in
18 parallel or lining up in some way. The course of conduct has
19 to do, in this instance, with an issue of negligence and the
08:56 20 course and the manner in which the company has maintained or
21 failed to maintain its product -- I mean, it's equipment.
22 That's all I see is happening here.

23 You know, you'll never be able to prove -- or
24 nobody would ever be able to prove that each of these events or
08:56 25 disprove that each of these events ever occurred. Nobody would

08:56 1 be able to do that. Except that you've got documentation
2 indicating there were reports.

3 Now, how do you prove it? Hey, it's already
4 disappeared into the air; so, who can say whether it occurred
08:56 5 or not. So, this is credibility that has to be determined and
6 dictated by the testimony of the witnesses and so on.

7 Mr. Buzbee?

8 MR. BUZBEE: Thank you, your Honor. Your Honor, I --
9 that's -- as I argued it last week, we -- we're going to
08:56 10 prove -- I mean, our allegation is the reason there's so many
11 leaks, spills, and emissions is because they don't maintain
12 their plant. And I think you hit it right on the head. And I
13 think the only issue I thought you asked was how should we
14 limit it -- or should we limit it, like, should we limit it --

08:57 15 THE COURT: That's what I'm trying to figure out.

16 MR. BUZBEE: That was -- that was your question; and
17 he's arguing, I think, back at the threshold issue. I think
18 you've already -- you've already --

19 THE COURT: Well, let me just say this. I disagree
08:57 20 with counsel that my statement or -- and if Judge Gilmore has
21 ruled some way, I can't just simply try a case based on what
22 some other judge says --

23 MR. BUZBEE: Exactly.

24 THE COURT: -- or does. I can't do that. I mean,
08:57 25 that would be foolish on my part. And if I'm going to make

08:57 1 mistakes, I should make my own mistakes since I'm going to have
2 to live with mine and not with hers, I hope.

3 But let's be clear. The course of conduct -- and
4 I don't even know if she understood the case or if anybody
08:57 5 understood the development of the case. I know that there's a
6 lot has been developed over the last six months, probably the
7 last -- yeah, probably the last six months.

8 And there certainly was a reason that Judge
9 Froeschner opened the door -- or reopened that door, because of
08:58 10 discussions that he and I had about Judge Gilmore's rulings.
11 Not because I disagree with her, but because I don't want to be
12 locked into whatever her thinking might be, whether it's
13 appropriate or not.

14 And that's not to say that she did not make a
08:58 15 right choice or decision. It's simply to say that the door has
16 to be open. So, I disagree with you that anybody has misled
17 you or presented the -- and, certainly, I haven't, because I
18 don't know what the plaintiffs' case is -- presented these
19 events in such a way that the defendant has been misled to
08:58 20 believe something different than what's being reported to the
21 Court. I'm reading the same papers you're reading, and that's
22 all I can say about that.

23 MR. BUZBEE: Your Honor, two issues with regard to
24 how -- all the documents that we intend to offer, if you allow
08:58 25 them, have been listed as exhibits for a long time. And these

08:58 1 are BP's documents, number one.

2 Number two, with regard to your question, which
3 is, "Should I limit it to this Pipestill 3B or is it plant
4 wide, because really this is indicative of a plant attitude,
08:58 5 not just Pipestill 3B," obviously, my opinion is this -- and I
6 think the case law supports me -- is that BP -- Keith Casey
7 will be here as the plant manager.

8 And I think I'm entitled to ask him -- he doesn't
9 just manage 3B. He manages the plant. And this is a plant
08:59 10 wide attitude, a plant wide -- they don't have a Pipestill 3B
11 maintenance program. They got a plant maintenance program.
12 So, I think limiting it to that, as he called it, a city block,
13 whatnot, you know -- he can say what he wants, but the fact of
14 the matter is this is a plant issue.

08:59 15 This is -- we're not talking about their problems
16 in Alaska. We're not talking about their problems in the Gulf
17 of Mexico. We're talking about their problem at the BP Texas
18 City plant. It's a plant wide problem. It's been well
19 recognized and we have the documents to show it.

08:59 20 So, I would urge you, your Honor, that it's not a
21 Pipestill 3B issue. I think it would be inappropriate,
22 respectfully, to limit it to that. I think it's a plant wide
23 issue.

24 Thank you, sir.

08:59 25 THE COURT: Well, that's where I am.

08:59

1 MR. BUZBEE: Thank you.

2 MR. GALBRAITH: I would like to say couple of things.

3 THE COURT: Sure.

09:00

4 MR. GALBRAITH: One of the things we talked with about
5 with Judge Froeschner when he took away our exclusion of any
6 other incident evidence was he said, "I still recognize that
7 they have to show the source of this event so that they can
8 show any other incident substantially similar," and I don't
9 think they can do that.

09:00

10 Now, you today have said the preamble or the --
11 the first thing that has to happen to render this pattern, you
12 have to show that is one of those data points, you have to show
13 this source. And I want to make sure I understand what -- are
14 you saying that they have to identify the source of this
15 particular release of April 19th, 2007, before they get to any
16 other incidents that they --

09:00

17 THE COURT: Well, here's what the law says about like
18 or similar events. It says that the plaintiff has to put on
19 some evidence of the source of this particular -- this
20 particular release.

09:00

21 Now, does that mean it's to your satisfaction or
22 my satisfaction? The answer is generally no, because the jury
23 has to decide that issue as well. If the plaintiff -- and if
24 the evidence is that they don't know what the source is or they
25 can't identify the source in the sense of, "We don't know where

09:01

09:01 1 it came from. All we know is this occurred," then there might
2 be some point at which you would stand and say, "Judge, before
3 we hear any evidence about these other events, I would like to
4 have you rule or determine and tell me" or whatever your motion
09:01 5 might say, "that there has been some evidence that an event
6 occurred and that it's identifiable, it's localized, we can see
7 a basis now for going forward with like or similar conduct or
8 course of conduct."

9 And, so, yes, it would be just like in a criminal
09:01 10 case or in a civil case where somebody is saying a person
11 committed an act and, therefore, we should be able to put on
12 evidence of other like or similar acts, to show that this
13 wasn't a mistake. That's really what we're talking about.

14 MR. GALBRAITH: Well, we -- part of, I think, the
09:01 15 background for these kind of discussions leading before today,
16 was the fact that we've deposed the plaintiffs themselves, we
17 deposed the plaintiffs' experts, and they all have admitted
18 that they do not know the source for April 19th, 2007.

19 We anticipate and I'm going to tell the jury that
09:02 20 we believe the evidence will show that nobody knows the source
21 of this. It could have well come from off site BP, didn't have
22 to come from any particular geography on site, any particular
23 pump or any piece of "Pipe 300" or anything like that, because
24 nobody knows and there's not likely to be that evidence.

09:02 25 I think that's a significant foible in their case

09:02 1 that's -- that's dispositive, in my mind. If that's -- if
2 those -- if that evidence doesn't change, if they're true to
3 what they've said under oath heretofore, I will be moving for a
4 directed verdict on that basis. But I certainly also think
09:02 5 that before they can point to other incidents and allege that
6 they are similar they have to establish what the source was for
7 this --

8 THE COURT: Well, here's the point. If this were a
9 conspiracy case, I can't wait until the end of the case, until
09:03 10 the plaintiff finishes his case and say, "Now I've seen some
11 evidence of conspiracy. Now let's go back and we'll permit him
12 to put on this, quote, hearsay evidence." We'll be here for a
13 month or two.

14 All of this evidence is evidence, and it comes
09:03 15 in. And lawyers have to rely upon the Court to be able to make
16 the distinction between the two. In other words, at the end of
17 the plaintiffs' case you will certainly have a right to make
18 that motion; and I have got the responsibility and duty to say
19 that it is or it is not. Now, that's all I can do.

09:03 20 I can't say how it should come in. I can't
21 fashion it in a way that it fits the way I would like to see
22 it, because I don't have a way. I know the plaintiff has a way
23 that they want to go. I know you have a way that you want to
24 go or don't want the plaintiff to go.

09:03 25 And the point is, like or similar evidence has to

09:03 1 come in -- or is permitted to come in at a point where there is
2 some evidence that an event occurred that can be attributable
3 to that particular plant.

09:03 4 Now, if there is no evidence, then the Court will
5 do several things -- one of two things. It will either strike
6 all the evidence that simply just puts the fluff on the cake or
7 it will say, you know, there's no evidence so your case is over
8 and we go home or it will say there is some evidence and this
9 evidence that has been presented or permitted in terms of what
09:04 10 is called course of conduct is not going to be struck and the
11 jury will be able to consider it. That's all I can do.

12 MR. GALBRAITH: Okay. To make it clear, because you
13 had also told us that the motion in limines stand and that they
14 govern attorney conduct at least until there is evidence of a
09:04 15 source here.

16 THE COURT: Sure.

17 MR. GALBRAITH: So, that would control -- the motion
18 in limines control our opening statements, for example, and at
19 least until there is some evidence of the source?

09:04 20 THE COURT: Right. And I don't know -- and I'm going
21 to have to be coached by both sides in this respect as to what
22 the documents show. Because that -- the documents that have
23 not been excluded are admitted. So, there's some evidence in
24 the record that I don't even know the content or the quality or
09:05 25 the nature of.

09:05 1 Now, to say that until the plaintiff has put on
2 some evidence that an event occurred you can't put on other
3 source evidence of course of conduct is simply to streamline or
4 cut me off from hearing evidence and the jury from hearing
09:05 5 evidence that might be stricken. And I'm telling you now,
6 under the rules, those -- that evidence is probably going to
7 come in over your objections until such time as I'm convinced
8 that he doesn't have a case.

9 I don't have a way of saying I got to wait until
09:05 10 I think he makes a case. I don't know -- I can't say if -- I
11 mean, for example, let's assume that his expert were to get on
12 the witness stand and say, "We can identify the source because
13 we know the chemicals that are being generated in that plant,"
14 or somebody. What if that's Witness Number 30 and we're
09:05 15 somewhere in next week? What am I going to do?

16 I mean, I have to let the evidence in in the
17 manner in which it's being presented and then rule on that
18 evidence. Now, the motion in limine simply says that
19 counsel -- and this is what I told you-all at the outset. I
09:06 20 cannot rule on an evidentiary point without hearing the
21 evidence.

22 So, I'm telling counsel, if you've got some
23 evidence that you're presenting that falls into these areas
24 where there has been a motion in limine asserted, then you need
09:06 25 to let me know that, "This is going into that area, Judge."

09:06 1 And I can say, "Go forward" or "What's your
2 response?"

3 And when you give me your response, I can say "Go
4 forward" or "No." That's basically where we are.

09:06 5 MR. BUZBEE: May --

6 MR. GALBRAITH: One thing you mentioned is that all
7 evidence that hasn't heretofore been excluded is hereby
8 admitted, I think, or something to that extent. And what I
9 believe you --

09:06 10 THE COURT: That's not excluded. You've given me
11 your --

12 MR. GALBRAITH: Our objections.

13 THE COURT: You marked the plaintiffs' exhibit list,
14 for example. And on the first page, let's say, are 10
09:06 15 exhibits. You -- you've objected to one of them, Number 7.

16 MR. GALBRAITH: Right.

17 THE COURT: That means that 1 through 6 and 8 through
18 10 are, from the Court's point of view, admitted. Now, the
19 Court is going to speak to that in just a minute.

09:07 20 I'm going to admit all of these evidence, all the
21 evidence that has not been excluded or objected to, because I
22 need to have that in place without us having to go through this
23 old fashioned way of presenting and throwing papers up in front
24 of the jury and arguing about whether it's been admitted or
09:07 25 not.

09:07 1 Now, there's certain evidence that I expect that
2 probably might be withdrawn at some point because it's not of
3 any use. It's not going to be relevant. So, that's what I am
4 saying when I said there is some evidence that will be in the
09:07 5 case before the jury even gets picked, because I'm going to
6 admit it.

7 MR. GALBRAITH: In other words, all I was just trying
8 to clarify is that if there is an objection on file you're
9 going to rule in the future and it may be admitted or may be
09:07 10 excluded.

11 THE COURT: Absolutely. Yeah.

12 MR. GALBRAITH: And I have -- since you asked us what
13 else was relevant for us to --

14 THE COURT: Well, let me make sure we close this door
09:07 15 before we do that.

16 MR. BUZBEE: Yes, your Honor. As you said, you're
17 obviously going to preadmit those exhibits that have not been
18 objected to.

19 THE COURT: Yes. Right.

09:07 20 MR. BUZBEE: I think the threshold has been met. I
21 mean, what he's trying to do is hamstring me in my opening
22 statement --

23 THE COURT: Well, I don't know if it's you; but I
24 don't want to be hamstrung. I'm just going to be the arbiter
09:08 25 here. I'm calling balls and strikes, you know.

09:08 1 MR. BUZBEE: Right. I think you've denied his motion
2 in limine on that; and I would like to be able to do my opening
3 statement just like you outlined, with these events -- he can
4 argue about them or not. But I think that -- you know, if you
09:08 5 deny the motion in limine, which you've done, I don't know why
6 he's trying to now tell me I can't talk about them in opening
7 statement. That is my case.

8 And, obviously, if you're going to preadmit the
9 exhibits, the -- whatever threshold he's talking about is --
09:08 10 that's some evidence that this came from this plant. So, I
11 think I'm in good shape. But I don't want you to yell at, you
12 know --

13 THE COURT: I don't yell --

14 MR. BUZBEE: I know you -- I asked her --

09:08 15 THE COURT: -- I don't think.

16 MR. BUZBEE: No, sir. But anyway --

17 THE COURT: Am I yelling?

18 MR. BUZBEE: No. No, you're not.

19 THE COURT: Not yet.

09:08 20 MR. BUZBEE: I'm sorry.

21 Anyway, your Honor, I just want to make it clear
22 that I do intend to -- I do have an expert that's going to
23 pinpoint the leak, that's going to talk about the improper
24 maintenance.

09:08 25 THE COURT: Well, I don't need to get into what the

09:08 1 evidence is.

2 MR. BUZBEE: Right. But I just want to talk about
3 that in my opening statement, is all I'm making clear.

4 THE COURT: Well, if you got some witness who is going
09:09 5 to testify to that, then there's no basis for counsel to
6 object --

7 MR. BUZBEE: Absolutely.

8 THE COURT: -- if he wants to object. And he can do
9 that, and there's nothing I can do except overrule it or
09:09 10 sustain it --

11 MR. BUZBEE: Gotcha. Thank you.

12 THE COURT: -- and we'll go from there.

13 What else is there, Mr. Galbraith?

14 MR. GALBRAITH: Your Honor, my understanding is there
09:09 15 are a number of subpoena requests that have gone out; and we
16 filed a motion to quash those subpoenas. One he mentioned was
17 to Keith Casey, the plant manager.

18 This is an apex deposition. And I recognize
19 we're in federal court; but still, there's been no showing of a
09:09 20 need for the apex of the plant, no showing of the particular
21 need or --

22 THE COURT: Well, let me just say this. I'm not going
23 to quash any subpoenas now. I'll take -- I'll probably take
24 this matter up on you-all's lunch hour. I hope you brought
09:09 25 your lunch, because I'm not going to spend my time and the

09:09 1 jury's time where we argue about these things.

2 If you-all got something to argue about and get
3 here in the morning, we'll start at 7:00 o'clock, we'll argue
4 with you about that till 8:30. And we're going to try this
09:09 5 case to the jury starting at 8:30 if we can make sure we got
6 the folks in here. So, let me just say right now, without
7 disregard and disrespect for your motion, I will not rule upon
8 any motions to quash before we pick this jury.

9 When we get this jury picked, we'll probably take
09:10 10 a break or some in between and we can talk about some of these
11 things.

12 MR. GALBRAITH: Thank you, your Honor.

13 THE COURT: All right?

14 Now, before we bring the jury panel in, let's
09:10 15 just take a look at the plaintiffs' third amended exhibit list.

16 How are we looking, Diane?

17 *(Sotto voce discussion at bench with court staff)*

18 THE COURT: Exhibits 1 through 6 and 8, 9, and 10 are
19 admitted; Exhibits 11 and 14 through 26 are admitted;
09:10 20 Exhibit 40 through Exhibit 46, admitted; Exhibit 106 and 107,
21 admitted; Exhibit 108 through 114, admitted; 18 -- 118 and 120,
22 admitted; 122, 125, '26, 127, admitted; 129 through 132,
23 admitted; 134 admitted; 136 and '37, admitted; 139, 142, 144,
24 and 146, admitted; 148, 150, 152, and '53, 154, '55, '56 -- I'm
09:12 25 sorry -- '55, '56, '57 -- excluding 154 -- 159, '60, '61, and

09:12 1 '62, admitted; 164 through 171 are admitted; 175 is admitted;
2 177, 180, 181, 183, 185, admitted; 187, '89, '90, '91, '94, '96
3 and 198 are admitted; 200 through 202, admitted; 204, 206, 208,
4 210, 212, admitted; 214, 217, '18, and '19, admitted; 221, 225,
09:13 5 and 226, admitted.

6 And I believe -- yeah, that's it. Those are the
7 plaintiffs' exhibits admitted.

8 Mr. Buzbee, I don't have your strike -- or
9 objections to the defendant's exhibit list unless I -- unless
09:13 10 it's in Houston.

11 MR. BUZBEE: We filed it and e-mailed it back --

12 THE COURT: Oh, did you?

13 MR. BUZBEE: If I can approach, I'll hand it to you.

14 THE COURT: You need to probably come around on this
09:13 15 side to hand it to me. I'm not sure how you --

16 MR. BUZBEE: I'm sorry. It's not bound, your Honor;
17 but here is --

18 THE COURT: Okay.

19 MR. BUZBEE: Thank you, sir.

09:14 20 THE COURT: All right. This could go on a little
21 while. Let me see how many exhibits we have objected to
22 generally.

23 Quite a few, right?

24 MR. BUZBEE: Yes, sir.

09:14 25 THE COURT: Okay. Let's see if we can get through

09:14 1 this. The defendant's second amended exhibit list -- is that
2 the right list, Mr. Galbraith?

3 MR. GALBRAITH: That's our current list, your Honor.

4 THE COURT: All right. Exhibits 1 through 8,
09:14 5 admitted; 15 through 18, admitted; 19, 20, and 31 through 40,
6 admitted; 44, admitted; 78, admitted; 100 through 104,
7 admitted; 107, 110, 111, admitted; 122, 124, 125, 126,
8 admitted; 138 and 139, 142, 143, 144, admitted; 186 through
9 190, admitted; 91, admitted; 223 through 230, admitted.

09:16 10 And if I'm -- if there's something been withdrawn
11 in between, I'm not checking that. I'm just going straight
12 forward.

13 231 through 244, admitted; 245 through 258, 259
14 through 272, 273 through 285, 286 through 292, all admitted;
09:16 15 293A, 294, and 295, admitted.

16 MR. O'ROURKE: Your Honor, we objected to the rest of
17 that.

18 THE COURT: The rest of them are objected to?

19 MR. O'ROURKE: Yes, your Honor.

09:17 20 THE COURT: All right. Let's see if I can find out
21 where I stopped, then.

22 Let's see. I believe I stopped at two --

23 MR. O'ROURKE: 295, your Honor?

24 THE COURT: -- 295.

09:17 25 So, Exhibits 296, and without regard for any

09:17 1 missed numbers in between, any excluded numbers, through 5616
2 are objected to. And certainly there are some numbers that
3 have been skipped in between there, but I don't think that I
4 need to address that at this point.

09:17 5 All right, gentlemen. Let's see.

6 All right. You're standing.

7 MR. GALBRAITH: Yes.

8 THE COURT: That means you have something more to say.

9 MR. GALBRAITH: When we first addressed the
09:18 10 questionnaire, you had outlined a procedure whereby we would
11 get to look at them overnight and then talk to them before voir
12 dire, to see if there's any obvious --

13 THE COURT: No. I want to talk to you, is there any
14 obvious disqualifications from you. I'm not going to look at
09:18 15 the panel until I -- I mean, I don't want you to talk to the
16 panel at all right now.

17 MR. GALBRAITH: No. No. There's -- I don't think
18 there's any panel busters --

19 THE COURT: Okay.

09:18 20 MR. GALBRAITH: -- at least in my point of view.
21 That's the first thing.

22 THE COURT: Okay. By "panel busters," you mean
23 persons who, let's say, are currently working for BP or
24 something obvious like that?

09:18 25 MR. GALBRAITH: Well, or any -- any shared

09:18 1 characteristics that would wipe out 20 people or 15 people at
2 once.

3 THE COURT: I don't have my list yet, but go ahead and
4 tell me.

09:18 5 No, no, I don't need the list. You give me the
6 numbers, because we're talking 1 through 35. And I'll be able
7 to make notes.

8 MR. GALBRAITH: There is Juror Number 7 --

9 THE COURT: Okay. Hold on just one second.

09:19 10 MR. GALBRAITH: -- is a stated hardship yesterday.
11 She has a minor son, 8 years old. And she was working hard
12 yesterday not to have to return today. Basically --

13 THE COURT: What's the hardship? That she has this
14 son or that --

09:19 15 MR. GALBRAITH: Yes. She's apparently sole care for
16 that -- she's a single parent, sole care. And she was pretty
17 adamant about that hardship, and she -- her point was it's
18 automatic if --

19 THE COURT: I don't automatically grant them, but
09:19 20 we'll talk with her about it.

21 MR. GALBRAITH: Okay.

22 THE COURT: And in the context of what the other panel
23 looks likes. I'm not going to mistreat anybody. We'll all be
24 in trouble.

09:19 25 MR. GALBRAITH: There are also but -- four people, 4,

09:19 1 7, 19, and 33, who indicate -- just for an example, I'll look
2 at Question 46 to Juror Number 19.

3 "Is there anything about what you have read,
4 heard, or learned from others regarding accidents or other
09:20 5 incidents at the BP refinery in Texas City or do you have a
6 strong personal belief that has already caused you to believe
7 that you could not be fair to BP in this present legal
8 dispute?"

9 Nineteen answered "yes," those other three
09:20 10 answered "yes," they could not be fair to BP --

11 THE COURT: Numbers 4, 7 and 19 and 13, did you say?

12 MR. GALBRAITH: And 33.

13 THE COURT: Oh, and 33.

14 MR. GALBRAITH: 4, 7, 19, and 33.

09:20 15 Nineteen, for example, wrote in there, for
16 example, "I have friends who have left to work in other
17 plants."

18 THE COURT: In other words, they're saying they cannot
19 be fair?

09:20 20 MR. GALBRAITH: Those four and only those four --

21 MR. BUZBEE: What question --

22 THE COURT: Yeah, that's what I'm asking.

23 MR. GALBRAITH: Forty-six.

24 Numbers 4, 7, 19, and 33 said, by virtue of --
09:20 25 one said "TV news coverage"; one said, "What I've learned from

09:20 1 friends who are out there."

2 THE COURT: All right.

3 MR. GALBRAITH: All have a strong belief -- "a strong
4 personal belief that has already caused me to believe I could
09:21 5 not be fair to BP in this present legal dispute."

6 That's only four, thank goodness; but there are
7 four who have indicated --

8 THE COURT: And 7 -- Number 7 in that slot is the same
9 Number 7 that says she has a hardship. Is that right?

09:21 10 MR. GALBRAITH: Yes, your Honor.

11 THE COURT: Okay. Any others that just come to mind
12 right away?

13 MR. GALBRAITH: No, your Honor.

14 THE COURT: Plaintiff?

09:21 15 MR. BUZBEE: Yes, sir, there are. You know, one of
16 the issues, your Honor, is -- where is my -- we talked about is
17 bifurcating this trial. And it looks like we're not going to
18 do that, which I obviously agree with.

19 But there are several jurors that flat out say
09:21 20 they do not believe in punitive damages, will not give punitive
21 damages. And I'm not -- I've never done a voir dire with you,
22 but I would just like to flag some of these folks. And it
23 could be that some questions at the bench will convince you
24 that they should be stricken. So, if you don't mind, I would
09:21 25 just like to give you the numbers.

09:21 1 THE COURT: What are those numbers?

2 MR. BUZBEE: Let me just start with Number 1 -- and
3 each of these people either have an issue with they won't give
4 punitive damages or they don't believe in mental anguish
09:22 5 damages and they basically have a damage issue problem.

6 I'm trying to use these tabs, which aren't really
7 user friendly.

8 Can you just give me the numbers so I don't have
9 to go through this?

09:22 10 MR. TAAFFE: It's 1 --

11 MR. BUZBEE: One.

12 MR. TAAFFE: -- 5 --

13 MR. BUZBEE: Five.

14 MR. TAAFFE: -- 6; 8; 9; 11; 12; 13; 16; 17; 19, which
09:22 15 is one that defendants expressed reservation on; 20; 21; 23 did
16 not provide a response on the punitive damages question at all,
17 sir -- they need to be questioned -- 24; 25; 27; 28 is another
18 on that just provided no answers to any of the questions on
19 those issues; 29; 31; 33.

09:23 20 MR. BUZBEE: And, your Honor, just as an example, each
21 of these -- when we read through these questionnaires -- and
22 this is just an example for you. Page 5 of Juror Number 1, it
23 says, "If supported by the evidence and instructed by the judge
24 to do so, could you consider compensation for the following
09:23 25 damages: Mental anguish?"

09:23 1 "No." So, this person is saying, even if you
2 told them to do it, even if the law requires it, they won't do
3 it. And I think that is a strike for cause and that's -- and
4 this same person says, "Would you give punitive damages?"

09:24 5 "No. They're absolutely absurd."

6 I think that disqualify -- not "disqualifies,"
7 but, obviously, is a strike for cause.

8 And this is the ones we've identified, and I
9 wanted to provide you that example.

09:24 10 THE COURT: All right. Anything else obviously we
11 need to think about? Or I need to think about?

12 MR. GALBRAITH: You're going to rule on these issues
13 after voir dire?

14 THE COURT: Yes. In fact, it very well might be that
09:24 15 we need to take some of these people off to the side. And I
16 generally use my little conference area there to question them
17 individually so that they're not embarrassed or humiliated.
18 And I have no reason to want to do that, any of us, for that
19 matter.

09:24 20 So, I just want to make sure that they understood
21 the question and -- and, so, what we might do is a general voir
22 dire. When we complete that, then we, you and I -- you, being
23 the lawyers and I -- will open that door and we'll sit in there
24 and we'll bring them in one at a time until we go through and
09:25 25 make sure that the people are saying what they -- what we think

09:25 1 they're saying. And without -- and I'm not sure that I'm going
2 to permit you to ask them any questions. If I do, it would be
3 very limited. And the reason is I don't want to make it seem
4 as though there's a choosing of sides. I just want to know
09:25 5 what they understand their answers to be. And we'll go from
6 there.

7 MR. BUZBEE: Okay.

8 MR. GALBRAITH: Thank you, your Honor.

9 THE COURT: Okay. Does that get us to a point where
09:25 10 we might be ready to start with the panel?

11 MR. BUZBEE: I think so.

12 THE COURT: All right. We've got 35 -- 6, 12 and 12,
13 24, 36.

14 We're going to need the first three rows and
09:25 15 we're going to need the row behind that row vacant, as well.
16 In other words, I don't want anybody -- and it may be that you
17 need to take the last --

18 Ladies and gentlemen, you need to take the last
19 two rows first. Fill up the last two rows across first. And,
09:25 20 then, anyone else on the second to the last row -- I need as
21 much space between the panel as possible because -- it's for
22 their own benefit, and they're not interested in having any
23 contact.

24 Thank you very much.

09:27 25 All right. Let me ask, gentlemen, regarding the

09:27 1 witnesses in this case, do we have any way to do this other
2 than go through the list?

3 MR. GALBRAITH: You mean we -- we have talked to them
4 about giving each other 48 hours' notice of who you're going to
09:27 5 call just so there won't be --

6 THE COURT: No, that's not what I'm talking about.
7 I'm talking about the panel. What we don't want is for
8 somebody to show up on the list of witnesses, who -- who has an
9 interest in the case and that person is at the courthouse, for
09:27 10 example, and now they get associated with the plaintiffs.

11 So, in other words, we've got people here --
12 we've got people that can be identified -- and I think I can
13 exclude this by asking whether or not they know of any person
14 who is currently in litigation or currently has any claim
09:28 15 against any oil company without specifically identifying BP at
16 the first and then try to make sure that they don't know the
17 individuals that -- certainly the plaintiffs, they don't know
18 the plaintiffs that are involved.

19 But I'm not sure that I want to go through the
09:28 20 entire list. So, I'm going to ask you if you would get your
21 list of plaintiffs together, make sure you've got that list of
22 plaintiffs. There are some -- let's see what I've got. There
23 are some -- there are some other type of witnesses, BP
24 witnesses, and there are business locations -- I think I might
09:29 25 have left my paperwork -- business locations that -- or

09:29 1 doctors' places that need to be identified. And we're going to
2 have to expect you-all to identify physicians who might have
3 done treatments so we can make sure that none of the persons on
4 the panel are being treated by those same physicians. So,
09:29 5 start pulling that information out.

6 MR. GALBRAITH: Your Honor, on the questionnaire, just
7 so you are aware, the questionnaire on Question 26 asked, "Have
8 you or someone close to you ever worked for or owned stock in
9 any the following companies?" And it listed BP and the various
09:29 10 contractors who employed the plaintiffs: PS2, ISI, Gulf Coast
11 Gunite, Tray-Tec, Gulf States, and Hydrochem.

12 And, then, 27 said, "Do you know any of the
13 following plaintiffs or their attorneys," and it listed the
14 ten: Rosa Claudio, Jose --

09:30 15 THE COURT REPORTER: I'm sorry?

16 THE COURT: Call those names out again, please.

17 THE CASE MANAGER: She can't hear you.

18 THE COURT: What did it -- it listed the names of the
19 plaintiffs?

09:30 20 MR. GALBRAITH: Yes, your Honor.

21 THE COURT: All right.

22 MR. GALBRAITH: The ten plaintiffs' names are listed
23 and attorneys Tony Buzbee and Sean O'Rourke.

24 THE COURT: Those are question numbers what now?

09:30 25 MR. GALBRAITH: It's 26 and 27.

09:30 1 THE COURT: Okay. Yeah, some did not answer any of
2 that.

3 All right. That might not be a problem, then.

09:31 4 The question, then, is whether or not we've got
5 other entities that need to be identified that might -- that
6 might need to be presented to the panel. So, let me get you to
7 think about that, anyway. Okay?

09:32 8 All right. Are you both comfortable with the
9 statement of the case as set out in the -- in the -- not much,
10 but --

11 MR. GALBRAITH: Joint pretrial order?

12 THE COURT: -- joint pretrial order?

09:32 13 Probably speak to some -- several of what the
14 plaintiff claims to be their contentions as well as the
15 defendant's positions on those, as well.

16 MR. BUZBEE: The plaintiff is comfortable with that
17 statement, your Honor.

18 THE COURT: Okay. All right.

19 Okay. I think we're ready for the panel.

09:32 20 *(Jury panel present)*

21 THE COURT: All right. Ladies and gentlemen, how
22 you-all doing this morning?

23 THE JURORS: (In unison) Fine.

09:37 24 THE COURT: You think it's okay? Now, you could -- we
25 could all have jobs on the highway, and I told the lawyers

09:37 1 earlier it's good to have a job that brings us inside
2 occasionally. And this kind of weather out there is tough.
3 So, we're happy to have you here.

4 I'm one of 20 federal judges who work in what we
09:37 5 refer to and what is described as the Southern District of
6 Texas, the Galveston Division being one of seven divisions.
7 You probably know enough about Texas to know that -- that we
8 have -- that those other divisions -- where they're located.

9 One, certainly, is in Houston. There's another
09:38 10 in Corpus Christi, Victoria, Brownsville, McAllen. And if
11 that's not seven, that's close enough. But that's the
12 spanse -- the expanse of this district. And, of course,
13 Galveston is a significant part of that. I believe Galveston
14 has about four counties in its division.

09:38 15 And we're certainly happy to have you here today,
16 and we appreciate your coming. I know you were here yesterday.
17 And you did a lot of the work for us that we needed to have
18 done by filling out the questionnaires and giving us an
19 opportunity to kind of visit with you outside of your presence,
09:38 20 to read your thoughts and minds about the work that is
21 necessary.

22 And I think it's important that we start out with
23 that idea, with the notion that -- that the trial by jury and
24 the justice system is one that doesn't work without people.
09:39 25 And, certainly, we could have a system that -- without having

09:39 1 citizens involved. And we know exactly how those systems work.
2 All of us probably had at least one universal network or
3 television station where we can see how things happen around
4 the world.

09:39 5 And the distinction between us and the rest of
6 the world is singular. We call it the "rule of law." We
7 respect the law; we abide by the law. And sometimes I even
8 speed, but the point is I know the law is out there. And I
9 know that you believe in that same process; that is, the rule
09:39 10 of law. That distinguishes the United States of America from
11 all of the rest of the world.

12 And we do this -- or we handle or we utilize or
13 put in play this rule of law generally through judges and
14 juries. And juries are judges, as well. You are judges of the
09:40 15 facts of a case. And your job as jurors is to decide the
16 disputed fact issues, not to know everything that possibly
17 could know, but to decide what is disputed between the parties.

18 And once the disputed areas of the law -- or the
19 facts are developed and determined, the law then can be applied
09:40 20 to those undisputed facts; and we get what we call a
21 "judgment." Does that make sense? Yeah.

22 So, where there is a dispute -- you know, all of
23 us have children, I suspect. If you don't, you were a child at
24 some point. And you know that the best way to resolve any
09:40 25 problem, the best way to move forward, should I say, on any

09:40 1 problem is to resolve the factual disputes. After all, when
2 two children run up to you and they both tell you different
3 stories, are telling you different things, the way you move
4 forward is you determine as best you can what the dispute is
09:41 5 and you determine how that dispute and those facts ought to be
6 resolved and then you plan to go forward from that.

7 That's what we do here in court. This is not a
8 strange venue, even though we operate by more rules than you
9 would necessarily operate by in a home setting or on your job.
09:41 10 For there are rules on your job. And if there were not rules,
11 we would be in trouble.

12 I would hate to think of anybody needing brain
13 surgery and the doctors not have rules that they follow. You
14 can imagine that it would just be a hit and miss situation. I
09:41 15 would hate to think that when I take my car to a mechanic that
16 there are not a set of rules by which that mechanic operates
17 and does his work. Otherwise, I would probably never get my
18 car out of the shop. Or at least I would be back every week,
19 having it repaired over and over again.

09:42 20 So, just as there are rules in science and in
21 mathematics and in mechanics and in surgery, there are rules of
22 law that a court -- that govern our conduct and how we go about
23 doing things in a court of law.

24 Are there any lawyers on the panel?

09:42 25 Got one.

09:42 1 All right. And how about others that might have
2 studied law? Any of you studied law?

3 All right. Number -- let's -- before we get too
4 deeply, let's see who Number 10 is.

09:42 5 What do you do for a living, Number 10?

6 You are Number 10, aren't you?

7 A JUROR: Yes.

8 THE COURT: I'm going to call you by number because
9 I'd never get the names correctly. And when I call you -- you
09:42 10 know, we're back in elementary school for the time being.
11 You're going to have to stand, because the court reporter needs
12 to take your answer.

13 A JUROR: All right.

14 THE COURT: And this might seem to be embarrassing,
09:42 15 but it's really not. It gives you a chance to stand up and
16 stand out. Thank you.

17 Number 10.

18 A JUROR: I work for the State. I'm an attorney for
19 the State. I work for the agency that investigates child abuse
09:43 20 and neglect and elder abuse and neglect.

21 THE COURT: Okay. Very good. And you have been
22 working with them and practicing law for how long?

23 A JUROR: Over 25 years.

24 THE COURT: So, you do understand the significance of
09:43 25 rules, don't you?

09:43 1 A JUROR: Yes, I do.

2 THE COURT: And you're in the business of enforcing
3 and making sure that the rules and regulations of the State of
4 Texas are followed.

09:43 5 A JUROR: That's correct.

6 THE COURT: And, of course, rules and regulations
7 sound -- might sound bad; but they help us to correct and
8 change our conduct, don't they?

9 A JUROR: I believe they do.

09:43 10 THE COURT: Yeah. And, so, you would be a proponent
11 of this notion that we need rules, would you not?

12 A JUROR: Yes, I would.

13 THE COURT: Okay. I probably will pick on you a
14 little bit more than the rest. So, go ahead and take a seat.
09:43 15 We're going to come back to you.

16 And what I want to do is I would like to teach a
17 few general principles of law that we're going to be bound by.
18 And I might want to use this lawyer to help me. See, because
19 she's not going to disagree with me. Even if she thinks I'm
09:44 20 wrong, she probably won't disagree with me.

21 A JUROR: That's true.

22 THE COURT: But I want to teach a few principles, and
23 we're going to get to those in just a few minutes.

24 Let me start out once again by welcoming you and
09:44 25 telling you my name is Kenneth Hoyt. I'm one of 20 judges, as

09:44 1 I said earlier, that work throughout the Southern District of
2 Texas. I'm particularly and specifically assigned to the
3 Galveston Division.

4 So, you know, I don't know that you'll
09:44 5 necessarily see me or meet me any particular place; but if you
6 need to know me or know something or report something, you
7 certainly have the duty and responsibility of contacting the
8 clerk's office or contacting the court personnel; and we'll
9 work as best we can.

09:44 10 During your stay here, your contact, your direct
11 contact, will be through the clerk's office. They will have --
12 or give you a number where you can reach them, and you can
13 certainly talk to them about any challenges or difficulties
14 that you may be having.

09:44 15 Now, I've been in this business for a little
16 while. I started back in 1981. And, so, I've been trying to
17 be a judge for a long time. I'm about to learn it, now that
18 I've gotten to a point where I could probably step away from
19 it.

09:45 20 I came to the State trial bench in 1981, in
21 Harris County. And I served on the Court of Appeals, which
22 included Galveston, in the mid Eighties. And I've been on the
23 federal bench since 1988.

24 So, let me ask, do any of you know me, know about
09:45 25 me, or have any business dealings or had any business dealings

09:45 1 with me over the last 28 years?

2 All right. I take it from your silence that if
3 you had a memory it's faded. I wasn't so, so bad.

4 All right. I ask that because it's important.
09:45 5 We are a team in a sense. You have your separate functions,
6 and I have mine; but we work together as a team. Your job is
7 to determine what the rules -- determine what the facts are in
8 a case. And you can imagine, my job as judge is to make sure
9 that the rules of law are followed and applied.

09:46 10 So, you know, a general way of appreciating this
11 is by the way that the architecture is established here in the
12 courtroom. If you notice, where you're sitting now as opposed
13 to where you will be sitting when you become jurors, you'll be
14 sitting in the box over there, with elevated seats. And
09:46 15 they're not elevated simply because they need to make you
16 taller. They're elevated because your responsibility has been
17 elevated. And it's elevated above the responsibility that the
18 lawyers have, who are sitting in what I call the "well" of the
19 court, in the place where the action occurs, where the battle
09:46 20 is fought.

21 The gladiators fight out in the arena, don't
22 they? You've seen that movie. The gladiators fight out in the
23 arena. And the lawyers are the gladiators in that sense. But
24 there are people who are sitting in the well -- I mean, above
09:46 25 the well of the court, who make judgment, who make decisions

09:47 1 about whether they prevail or not. That's what you're doing as
2 jurors and as judges in this case.

3 But there's ultimately one person who does the
4 thumb up or thumb down in all these situations, isn't it?

09:47 5 That's the man or the woman who holds the scepter, who holds
6 the rule of law. And that's the role I play. My seat is
7 elevated even higher than your seats because the -- no one is
8 above the rule of law. No one is above the law, not even as I
9 sit here.

09:47 10 The point is that we, you and I, play this
11 reciprocity role. I permit certain evidence into the case.
12 The lawyers present it, I permit it or not, and then you
13 receive. I then give you instructions on how you should handle
14 that evidence, and you decide that evidence. And then I make
09:47 15 the application of the law to that evidence, which ends up
16 being a judgment in a case.

17 Now, that happens in every court in this country.
18 It might be a federal court or a municipal court or a family
19 law court or a juvenile court, but it happens in every court in
09:48 20 this country. We -- that's the pattern. And the pattern
21 should not and is not going to be broken, because the rule of
22 law says that it is not.

23 So, that's what you will be doing this morning.
24 And that gives you some sense of the importance of the work
09:48 25 that you're doing.

09:48 1 There's one thing that I probably need to tell
2 you about this. Once you move from those seats to those seats,
3 you sort of shed some of your -- some of your covering, as we
4 say. Or maybe you put on some other different covering. And
09:48 5 what do I mean by that?

6 As judges, you're not to bring your political
7 agendas, you're not to bring your biases and prejudices and
8 your feelings and likes and dislikes into the courtroom. You
9 would expect that of any judge. You want to come before a
09:48 10 judge who is going to be fair and equitable and to permit you
11 to have your say or to permit you to present your case and
12 treat you in a fair and equitable way.

13 But that's what's expected of you, which means
14 that I can't go out, for example, or you can't go out and
09:49 15 investigate some event to find out on your own what it is that
16 you want to know about an event. You have to -- you are -- and
17 you are bound by, you have to bind yourselves as a group and to
18 the Court as a -- as a unit, to the evidence that is presented
19 here. That's what you're bound to do.

09:49 20 You take an oath that, "I will not go out and do
21 my own investigation. I won't call my brother-in-law or my
22 sister-in-law and get their opinion. I won't let my husband or
23 wife tell me what they think. I will not be bound by outside
24 forces. I'll be bound only by the evidence as presented and
09:49 25 the rule of law that is given to me in this court." That's the

09:49 1 oath that you take. That's the oath that I take. And neither
2 of us can walk away from it and do as we please.

3 Otherwise, we might as well be laying on the
4 table and the surgeon walks in and says, "Who is this person
09:50 5 and where do you want me to cut?" Because that's what we put
6 ourselves at risk of; that is, the risk of just simply
7 haphazardly doing things, not according to law but according to
8 the way we feel. It renders the whole process worthless
9 because we don't know from day-to-day what to expect from the
09:50 10 judiciary, from the judges. And the judges are also you, the
11 jury.

12 We want that predictability, and that's what the
13 rule of law gives to us. That's what you signed up for as
14 citizens. You don't remember that, do you?

09:50 15 Well, when the doctor delivered you, he said,
16 probably the first words, "Welcome to this United States of
17 America." Do you remember that? You became a citizen of the
18 United States; and you signed up for this awesome
19 responsibility, the envy of the world. And, so, I hope that
09:50 20 you appreciate the importance of the work that you do.

21 You don't have to like people to do right, do
22 you? I've got a lot of relatives I don't like. I love them,
23 though. And by that I mean I treat them right. But I
24 certainly don't like them, and I don't hang around them either.
09:51 25 That's part of loving them, is not letting myself hang around

09:51 1 them too much.

2 I say that for the benefit of all the lawyers in
3 the world, including Number 10. People find reasons to dislike
4 lawyers, and then they go out and hire them anyway, "I need a
09:51 5 lawyer to help me with this case." So, you like your lawyer
6 but you don't like anybody else's. Well, you have to put that
7 aside as judges, and so do I.

8 I run into a lot of lawyers that I wouldn't eat
9 lunch with but they get respect in this courtroom and they're
09:51 10 going to be treated fairly in this courtroom and they would not
11 know that I wouldn't have lunch with them. That's the point of
12 being judges.

13 That's how we operate in this arena. We don't
14 have to like the people we work for and work with. You got
09:52 15 some people that work with you that you don't like; and you
16 show up every day and, of course, I hope that you get along
17 with them.

18 The point of all of this is to say that this
19 courtroom is a workplace where we apply rules and where it
09:52 20 doesn't matter that you don't like lawyers. It doesn't matter
21 that you don't like doctors, it doesn't matter that you don't
22 like anybody, because you're going to leave that problem
23 outside the courtroom. When you come in here, you choose to
24 take an oath and you take an oath that you're going to follow
09:52 25 the rule of law as presented and facts -- and determine the

09:52 1 facts as presented to you.

2 This case is a bit complex in the sense that it's
3 going to be a little bit longer than some of the cases that
4 you've probably sat on before. Let's see a show of hands of
09:52 5 you who have sat on a jury panel before on civil case. Just
6 raise your hands if you sat, and hold them up for just a few
7 minutes. I know you've already answered the question. If
8 you've been on a jury panel before, a civil jury panel, raise
9 your hands. Just a few of you.

09:53 10 Was it State court? Probably? Here in Galveston
11 or another --

12 A JUROR: I think it was the County.

13 THE COURT: County court? All right.

14 And what's the longest case that you've sat on,
09:53 15 Number 2?

16 A JUROR: Three days.

17 THE COURT: Three days?

18 I saw a hand in back. Looks like Number 14.

19 A JUROR: Fourteen. Two days.

09:53 20 THE COURT: Two days. All right.

21 This case is going to last a little bit longer
22 than that, more than two days, more than three days, more than
23 six days. It's probably going to last somewhere in the range
24 of eight or ten working days, maybe a little bit more.

09:53 25 Now, I don't say that to frighten you. We get to

09:53 1 know each other real well when we work together closely. And
2 that doesn't mean I'll be chatting with you. It just simply
3 means you'll recognize me when you see me. But we work very
4 well together when we make up our minds at the outset that this
09:53 5 is a job that has to be done.

6 And you would not have been called had you not
7 been capable of performing. So, that's the premise, that you
8 would not be here if you were not called and you would not be
9 here if you were not capable.

09:54 10 Any of you have any surgery planned over the next
11 two or three weeks?

12 Number 3. All right.

13 Anybody got any -- what's your number, sir?

14 A JUROR: Thirty-three.

09:54 15 THE COURT: I'm sorry?

16 A JUROR: Thirty-three.

17 THE COURT: Is it 33?

18 A JUROR: Yeah.

19 THE COURT: You got some surgery planned?

09:54 20 A JUROR: This week my wife has two surgeries, this
21 Friday.

22 THE COURT: Okay. All right. We'll talk to you about
23 that.

24 Let's see. All right. Did I see any other
09:54 25 hands?

09:54 1 All right. Well, we certainly don't want to miss
2 brain surgery at this hour, would we? You've got to remember
3 that you've got an operation if you have one.

4 How about some other events that are very
09:54 5 important to you? What is it that's going to happen in the
6 next two or three weeks that you think is more important than
7 being on a jury?

8 All right. We got a lot of hands. All right.

9 All right. Let's take those hands down where you
09:55 10 think it's going to work. Let's see those hands again. Going
11 to work is important.

12 A JUROR: Work.

13 THE COURT: All right. What's your -- Number 8?

14 A JUROR: Eight.

09:55 15 THE COURT: Yes, ma'am, please stand.

16 A JUROR: I talked to my boss yesterday, and they are
17 not going to pay me for missing work. And I'm the breadwinner,
18 and I can't -- I'm not going to be able to pay my bills.

19 THE COURT: Who is your boss? Who is your boss?

09:55 20 A JUROR: John and Lynne Averett is their names. They
21 live in Houston. I work for a married couple. I work on
22 Broadway, at a shop called The Frog at Home. It's furniture
23 and interior designs.

24 THE COURT: Okay. Small company?

09:55 25 A JUROR: Yes.

09:55

1 THE COURT: All right.

2 Let's see. I saw another hand, I believe.

3 Number 4?

09:55

4 A JUROR: Yeah. My sister -- my mother, she's
5 elderly. My sister is her major caregiver, you know, the
6 caregiver, takes care of her. And we worked it out so where
7 she can go to take vacation and I go up there and take care of
8 my mother. She's elderly.

9 THE COURT: Where is "up there"?

09:56

10 A JUROR: New Jersey.

11 In any case, we had the tickets for a long time;
12 and it would be a financial hardship for me to lose out, you
13 know. I'm going out the 28th.

14 THE COURT: I'm sorry. I missed that.

09:56

15 A JUROR: I'm leaving -- I have tickets for the 28th.

16 THE COURT: 28th of December?

17 A JUROR: Yes, sir.

18 THE COURT: All right. If we're not done by
19 Christmas, Santa Claus is not going to come see any of us.

09:56

20 A JUROR: In any case, I thought I would mention that.

21 THE COURT: I appreciate that.

22 A JUROR: Thank you.

23 THE COURT: It puts it in perspective, too. We
24 certainly expect to be home before Christmas. This is -- today
09:56 25 is the first day of December, right?

09:56

1 A JUROR: Yes.

2 THE COURT: I didn't miss anything.

3 A JUROR: I know. I just --

09:56

4 THE COURT: You know, Rip Van Winkle slept through a
5 revolution. When he fell asleep, King George was on the
6 throne. Next thing you know President George Washington was --
7 so, we certainly don't want to miss our -- miss the --

8 A JUROR: I just don't want to be up here the 27th,
9 you know, still be here.

09:57

10 THE COURT: Oh, no. We'll be long gone before that.

11 I think I saw hand behind -- Number 15, is it?
12 I'm sorry. What is that?

13 A JUROR: Sixteen.

14 THE COURT: Sixteen.

09:57

15 A JUROR: Yeah. I have exams this whole next two
16 weeks, and I'd miss school. So, it would be really hard to
17 come and be a juror. So --

18 THE COURT: Well, don't you study for those exams?

19 A JUROR: Yeah. But I have to, you know, miss them if
20 I'm coming here. So --

09:57

21 THE COURT: Where are you in school?

22 A JUROR: I'm at U of H main campus.

23 THE COURT: U of H main?

24 A JUROR: Yes.

09:57

25 THE COURT: My goodness. That's a pretty good drive,

09:57

1 isn't it?

2 A JUROR: Yeah, I know.

3 THE COURT: All right. How many tests do you have?

4 See, you might be taking tests on the very days

09:57

5 we're going to take off.

6 A JUROR: I have three tests.

7 THE COURT: I'm hopeful here.

8 A JUROR: Three tests.

9 THE COURT: Okay.

09:57

10 A JUROR: The first one starts on Wednesday and --

11 THE COURT: Wednesday of next week?

12 A JUROR: This week.

13 THE COURT: Wednesday of this week. Okay.

14 A JUROR: Uh-huh.

09:58

15 THE COURT: And --

16 A JUROR: And the next one is Thursday of next week.

17 THE COURT: Thursday of next week.

18 A JUROR: Yeah.

19 THE COURT: Nothing on Monday?

09:58

20 A JUROR: No. The -- I have two tests on Thursday.

21 I'm sorry. But the -- yeah. So --

22 THE COURT: Okay. I see. Okay. Very good.

23 Did I see another hand?

24 All right. You're sitting next to Number 16; so,

09:58

25 you must be 17.

09:58 1 A JUROR: Yes.

2 THE COURT: All right.

3 A JUROR: I'm an educational diagnostician. I work at
4 Pasadena ISD. And I'd be putting the school district out of
09:58 5 compliance, because I have to have my reports written and go to
6 an annual ARD meetings within a certain amount of time. I
7 would be breaking the federal mandated laws of the school --
8 school law.

9 THE COURT: Can't be breaking federal law if you're in
09:58 10 court.

11 A JUROR: School law. You know, there's not enough
12 people --

13 THE COURT: Well, you said the ARD? These are -- this
14 is not some special education, is it?

09:58 15 A JUROR: Yes.

16 THE COURT: Oh, this is special?

17 A JUROR: Yes, it's for special education. I evaluate
18 children for disability.

19 THE COURT: I understand.

09:59 20 Did I see another hand?

21 I'm taking notes. And you must be -- you're
22 across the aisle; so, you're Number 19?

23 A JUROR: Yes, sir, Number 19.

24 THE COURT: Okay.

09:59 25 A JUROR: I have an MRI scheduled and a carotid scan

09:59 1 scheduled in the next two days.

2 THE COURT: When you say "the next two days," you're
3 talking about this week?

4 A JUROR: Yes, sir.

09:59 5 THE COURT: All right.

6 You've already held up your hand once. You
7 change your mind?

8 A JUROR: If I am going to this, they are not paying
9 for me, somebody not paying anybody.

09:59 10 THE COURT: Who is the company you work for?

11 A JUROR: Piping Technology and Products, in quality.

12 THE COURT: All right. Let me write that down.
13 Number 33.

14 Okay. How many other hands did I miss? Oh, one,
09:59 15 two. Yeah, Number 7? Yes?

16 A JUROR: I have some lumbar issues, and I'm currently
17 getting treatment for it. I have a letter from the person, the
18 doctor, that I'm getting treatment for. And, so, it's
19 difficult for me to sit for prolonged periods of time.

10:00 20 THE COURT: What do you do every day?

21 A JUROR: I'm a physical therapist assistant. So, I'm
22 always moving and walking around.

23 THE COURT: All right.

24 A JUROR: And I'm also the head of my household. I'm
10:00 25 a single parent. I have an 8 year old son. And, so, if in

1 case of an event where I need to go pick him up from school,
2 I'm really the only person that can do that. I don't have
3 family members that --

4 THE COURT: Sir, you're going to have to hold up.

5 All right. Yeah. I have that, Number 7. Yeah.
6 Okay. Thank you very much.

7 Number?

8 A JUROR: Eleven.

9 THE COURT: Eleven?

10 A JUROR: Yes, sir.

11 THE COURT: Yeah. Okay.

12 A JUROR: I just would like the Court to know that,
13 you know, during the Christmas holidays -- hopefully this will
14 be ended, but the 20th I'm flying out to San Diego.

15 THE COURT: If we're not done we're all going to go
16 with you.

17 A JUROR: Thank you.

18 THE COURT: All right.

19 All right. Did I get all the hands? No cheap
20 tickets that you want to trade to me and let me give you a
21 voucher or something?

22 Yes, ma'am, all the way to the back, what's your
23 number?

24 A JUROR: Twenty-eight.

25 THE COURT: Twenty-eight.

10:01 1 A JUROR: Is the 18th is a realistic date for us to be
2 done, because I do have a flight out of the country on the
3 18th?

4 THE COURT: What is the 18th?

10:01 5 A JUROR: A Thursday.

6 THE COURT: Thursday? Thursday at the 18th you're
7 planning to leave the country?

8 A JUROR: Yes, sir.

9 THE COURT: All right.

10:01 10 A JUROR: No. It's a Friday. I'm sorry.

11 THE COURT: Well, if she doesn't know --

12 A JUROR: I don't know. It's the 18th.

13 THE COURT: I bet she knows. I'm just kidding. Is it
14 Thursday or Friday?

10:01 15 A JUROR: It's a Friday.

16 THE COURT: All right. I think I've got all the
17 statements regarding the next two or three weeks, I think I
18 said, right?

19 And, so, let's talk a little bit about the case.
10:02 20 Let me just introduce the case to you. There are several
21 plaintiffs named as plaintiffs in this lawsuit. The name that
22 I will give to you is simply one of the plaintiffs.

23 I'll ask counsel for the plaintiffs to be
24 introduced by name. And you may have already seen these, but
10:02 25 I'll ask counsel to introduce by name the plaintiffs who will

1 be presented in this trial as plaintiffs.

2 And I'll introduce the defendant -- or give you
3 the name, and then I'll have counsel for the defendant
4 introduce himself and his co-counsel as well as any
5 representatives that are with him.

6 The style of the case -- when we say "style," the
7 way it's set up is "Aaron Wilson Garner versus BP Products
8 North America, Incorporated." Garner and others are the
9 plaintiffs in the case. BP Products North America is the
10 defendant. So, you might hear us referring to the "plaintiffs"
11 or the "defendants," the plaintiffs being the parties bringing
12 the lawsuit, the defendants the parties responding to the
13 lawsuit.

14 Now, here's what the plaintiff -- the plaintiffs
15 contend -- or at least what I think the parties agreed that
16 is -- has -- is the basis of this lawsuit. This is referred to
17 as a personal injury case, that involves the allegation -- that
18 is, the plaintiffs allege that they were exposed to toxic
19 substances at the petrochemical refinery that belongs to BP
20 Products North America, the defendant; that this event occurred
21 on April 19 of 2007, somewhere in the evening between 8:45 p.m.
22 and 9:00 p.m.

23 The workers were in the -- what is referred to as
24 the Pipestill B, PS B3 Unit, of that plant at the BP Texas City
25 refinery. And they began reporting what they claim to be

1 adverse physical reactions to what is called an airborne
2 chemical; that is, something transmitted by air. The workers
3 claim to have experienced various symptoms requiring medical
4 evaluation.

5 They now bring this suit for what we call
6 "personal injuries." The plaintiffs have a number of subclaims
7 about how this occurred, and those will be -- you'll get
8 those -- those will be spoken to at a later point.

9 BP claims or would say that -- that the
10 plaintiffs did not -- or that there was no evidence, should I
11 say, of a toxic release or a substance released on that
12 particular occasion and, if it was, if there was, they're
13 claiming that the source is not BP or cannot be identified as
14 being a BP exposure.

15 I will not try to explain or discuss with you the
16 full extent of the parties' claims here and their defenses; but
17 I'll permit them to make opening statements to them, certainly,
18 at the appropriate time.

19 Here's what I need to know from you, and I think
20 most of you have answered these questions already. Is there
21 anything about what I've just said that causes you some concern
22 about your ability to be fair and impartial in a trial of this
23 nature? Anything about what I've said so far?

24 And by "fair and impartial" I mean you can listen
25 to the evidence, make a determination of whether the

10:05 1 plaintiffs' claims are more likely than not, and then return a
2 verdict on that basis, without regard for the plaintiffs
3 individually and without regard for BP as a corporation.

4 Because BP has a right to be treated fairly just
10:06 5 as the plaintiffs do, and the plaintiffs have a right to be
6 treated fairly just as BP does. There is no distinction to be
7 made between parties in a court of law. That's a rule. That
8 is, whether they're corporate or individuals, they're entitled
9 to a fair trial. That makes sense. None of us are
10:06 10 corporations. We all want to be treated fairly, and we don't
11 want to think somehow a corporation has an advantage. And the
12 corporation certainly doesn't want to think it has a
13 disadvantage. So, that's the rule.

14 Anybody disagree with that rule or can't follow
10:06 15 that rule?

16 Number 8, is it getting warm to you?

17 A JUROR: I can't focus or concentrate because all I
18 can think about is how I'm going to pay my bills.

19 THE COURT: Well, we don't need to worry about that
10:06 20 right now. You're going to get the minimum wage today. I'm
21 saying that facetiously. But the point is that we'll discuss
22 that.

23 So, let's not fret out and concern ourselves
24 right now with what you need to deal with tomorrow. We have
10:07 25 enough trouble right now, today. Just deal with today, and

1 we'll get through our process here; and we'll see whether or
2 not you're qualified to serve on this panel. And that applies
3 to everyone here.

4 So, anything anyone else have any concerns about
5 that -- that's going to block out their ability to answer my
6 questions? Because I need to have your attention. Because if
7 I can't get your attention, the lawyers are going to be in
8 trouble later on. They won't have it either. Okay?

9 All right. So, let's -- let's focus on what we
10 have to do here, and I think we'll be all right. Okay?

11 All right. Temperature is okay in the room,
12 right?

13 THE JURORS: (In unison) Yes.

14 THE COURT: All right. Good deal. I know I have some
15 air blowing past me, and I want to make sure that there's no
16 overheating.

17 All right. So, my question basically is fair
18 trial. I think -- I didn't get any hands saying that you
19 couldn't be fair.

20 So, now, what constitutes fairness, though, can
21 be -- we can all have opinions about; and that's why we're in a
22 court of law. The rules dictate what fairness is. And, so,
23 we'll talk about that in just a minute. But before we get any
24 further, then, let me have the lawyers introduce themselves.

25 Counsel for plaintiff, would you please stand,

10:08 1 introduce yourself?

2 And, ladies and gentlemen, I would like to know
3 if you know the persons who are standing, personally or
4 professionally; and, if you know them personally or
10:08 5 professionally, I might need to know how you know them.

6 And I don't want to embarrass you; but if there
7 is something we need to know, you need to tell us now.

8 Go ahead, counsel.

9 MR. BUZBEE: I'm Tony Buzbee. I represent the 10
10:08 10 plaintiffs in this case.

11 This is Sean O'Rourke and --

12 MR. VICK: My name is Gabe Vick. I represent three of
13 the plaintiffs in this case.

14 MR. BUZBEE: And you'll also see Peter Taaffe, another
10:08 15 lawyer from my firm.

16 I'm a Galveston County lawyer.

17 THE COURT: Any of you know Mr. Buzbee or his
18 associates?

19 I know you've seen his advertising.

10:08 20 MR. BUZBEE: I hope so.

21 THE COURT: And I'm saying that not to be facetious;
22 but I don't want you to sit here and say, "No, I never heard of
23 the guy. I don't know anything about him."

24 I want to know if you know him, whether it's just
10:09 25 in passing or whether it's simply you've seen advertising that

10:09 1 he's done or whether you've seen simply -- you know, whether or
2 not you've had business with him or whether he represented you
3 or a member of your family. That's where I am going with this.

4 Number 1?

10:09 5 A JUROR: Just from living here, I've seen his ads.

6 THE COURT: All right. Is that it?

7 A JUROR: Same here.

8 THE COURT: Same?

9 All right. Anyone else?

10:09 10 What's your number, sir?

11 A JUROR: Twelve.

12 THE COURT: Twenty-four?

13 A JUROR: Twenty-four. Same, advertisements.

14 THE COURT: Same. Okay. But no one knows him
10:09 15 professionally; that is, you don't have cases with him or he's
16 not your lawyer or that -- those kinds of things? I take that
17 to be your answer.

18 All right. Are the plaintiffs in the courtroom,
19 counsel?

10:09 20 MR. BUZBEE: They are, your Honor.

21 THE COURT: Would you call their names --

22 MR. BUZBEE: I will.

23 THE COURT: -- if you have the list there and have
24 them stand?

10:09 25 Ladies and gentlemen, this is going to be a

1 little bit of an acrobatic thing here. And what I would like
2 the plaintiffs to do is stand and come forward enough so the
3 panel doesn't have to twist too much to see them, because we
4 need to make sure that they're not your relatives or friends.

5 All right? That's where we were going with this. Okay?

6 MR. BUZBEE: Rosa Claudio.

7 THE COURT: Would you please stand?

8 Can you all see Rosa?

9 All right. You may sit.

10 MR. BUZBEE: Jose Estrada.

11 THE COURT: All right.

12 MR. BUZBEE: Eleno Guerra, Wayne Jefferson, Gregorio
13 Fuentes, Willie Mays, Edwin Munoz, Trey Pearson [sic].

14 THE COURT: Step out.

15 All right. Go ahead.

16 MR. BUZBEE: Charles Taylor, Gilbert Cantu. Those are
17 the 10 in this case, your Honor.

18 THE COURT: All right. Do you recognize any of those
19 persons, ladies and gentlemen? If you do, raise your hand. If
20 you don't, it's no problem.

21 All right. Do you recognize that you -- by name,
22 do you have friends or relatives or neighbors who might be
23 relatives of these individuals as far as you know?

24 All right. I take it from your silence you
25 don't.

10:11 1 All right, counsel, Mr. Galbraith.

2 MR. GALBRAITH: Thank you, your Honor.

3 I'm Jim Galbraith for BP. With me here from my
4 office is Lyle Courtney and Tony Brown.

10:11 5 These are representatives of BP, Ken Panozzo,
6 Mary Clark Kees. And in the back is Joe Trapp.

7 THE COURT: All right. Recognize any of those
8 individuals?

9 Mr. Galbraith, what's the name of your firm?

10:11 10 MR. GALBRAITH: McLeod, Alexander, Powel & Apffel,
11 here in town.

12 THE COURT: Say that slower.

13 MR. GALBRAITH: I'm sorry. McLeod, Alexander, Powel &
14 Apffel.

10:11 15 THE COURT: The question is whether or not you know
16 the members of the firm, whether they've done work for you,
17 whether or not you've had some associations with any of the
18 members of the firm or know any of the persons in the courtroom
19 that are representatives of either BP or the law firm. If so,
10:11 20 please raise your hand.

21 All right. I see one hand.

22 Please stand. Number 21, is it?

23 A JUROR: Twenty-one.

24 THE COURT: Twenty-one. Yes, ma'am?

10:12 25 A JUROR: I recognize Tony Brown. I worked at the

10:12 1 district clerk's office at the Galveston County courthouse.
2 And I recognize the other gentleman, but I've never had any
3 dealings with him.

4 THE COURT: All right. And what would be the
10:12 5 recognition? Just seeing them come and go?

6 A JUROR: Yes, sir.

7 THE COURT: And what is your job?

8 A JUROR: Right now I'm a substitute teacher, and I'm
9 running for district clerk.

10:12 10 THE COURT: All right. But you apparently worked at
11 the district clerk's office?

12 A JUROR: I worked there for 15 years, yes, sir.

13 THE COURT: And, so, you got to see a lot of faces,
14 not necessarily these faces, but some of these faces --

10:12 15 A JUROR: That's correct.

16 THE COURT: -- as they would come in and file
17 documents, I gather.

18 A JUROR: Yes, sir.

19 THE COURT: Any particular relationship that you
10:12 20 developed with any firm, particularly this firm?

21 A JUROR: No, sir.

22 THE COURT: Or Mr. Buzbee's firm?

23 A JUROR: No, sir.

24 THE COURT: And I gather that your knowledge or
10:12 25 recognition of them is simply facial; that is, you've seen the

10:12 1 faces frequently or what is it?

2 A JUROR: Yes, sir, when I was working there.

3 THE COURT: Okay. Meaning there's no -- in other
4 words, you didn't go to their Christmas parties. That's where
10:13 5 I am coming from.

6 A JUROR: No. Never was invited.

7 THE COURT: Well, and I have to be plain and clear
8 because we forget about things. You know, we get invitations
9 to stuff and we show up and we don't remember. And I know
10:13 10 that -- I know that from time to time the clerk's office might
11 even have a Christmas party; and they might invite all the
12 lawyers in town, whether they show up or not. But the point is
13 that we have opportunities for contact with each other, and I'm
14 trying to make sure that we know what contacts we've had in the
10:13 15 past. All right. I take it --

16 Yes, ma'am, Number 10?

17 A JUROR: It's very remote, but I think the Apffel
18 family lives in my neighborhood and that Mr. Apffel may have
19 represented my brother's son, but I'm not positive.

10:13 20 THE COURT: How long ago?

21 A JUROR: Probably two years ago.

22 THE COURT: Okay. And did you have any connection --
23 before you shake your head, let me finish the question.

24 A JUROR: Oh, okay.

10:13 25 THE COURT: Did you have any opportunity to interface

1 with him or with whoever was from the firm that might have
2 represented a member of your -- this is a member of your
3 family?

4 A JUROR: Correct.

5 No, I have not.

6 THE COURT: And I think you said your brother?

7 A JUROR: My brother's son.

8 THE COURT: Your brother's son.

9 A JUROR: Uh-huh.

10 THE COURT: Okay. So, you had no contact with them.

11 And over the years, being in the profession that
12 you're in, have you had any contact otherwise with any member
13 of the family or any of the members of the firm?

14 A JUROR: No, I have not. My practice has not been in
15 Galveston.

16 THE COURT: Okay. Where do you practice law, by the
17 way?

18 A JUROR: In Austin.

19 THE COURT: What are you doing in Galveston?

20 A JUROR: I live here.

21 THE COURT: You got a helicopter or something?

22 A JUROR: Sort of.

23 THE COURT: Sort of. Okay.

24 A JUROR: Yeah.

25 THE COURT: That's not as close as Houston. That's

10:14 1 why I am being facetious here.

2 A JUROR: No, it's not. No. I retired from the State
3 in '96, and I've gone back to work. But I continue to work and
4 live here.

10:14 5 THE COURT: I see. Okay. That helps me. Thank you
6 very much for that.

7 A JUROR: In 2006. Excuse me.

8 THE COURT: But the kind of work you're doing now, I
9 gather, Number 10, is the same kind of work you did before you
10:15 10 retired?

11 A JUROR: Yes, it is. That's correct.

12 THE COURT: And you're not in the general practice of
13 law in that sense?

14 A JUROR: No, I'm not.

10:15 15 THE COURT: All right. Very good.

16 MR. GALBRAITH: There was one other hand, your Honor.

17 THE COURT: Oh, I missed it. I'm sorry.

18 Where is that hand?

19 Yes, please. Don't be shy. Hold up your hand.

10:15 20 A JUROR: I'm Number 18. I recognize Mary Clark.

21 THE COURT: You recognize who?

22 A JUROR: Mary Clark.

23 THE COURT: Mary Clark? And how do you know her? Is
24 it embarrassing or do you want me to take it to the side or
10:15 25 what?

10:15

1 A JUROR: I do contract work for BP.

2 THE COURT: Oh, you do? And are you currently doing
3 that?

4 A JUROR: Yes.

10:15

5 THE COURT: And what do you call "contract work?"

6 Where you, as an individual, go in for a certain period of time
7 for a particular job or what?

8 A JUROR: Yes. I do document control.

9 THE COURT: Say it again.

10:15

10 A JUROR: I do document control.

11 THE COURT: "Document control"?

12 A JUROR: Yes.

13 THE COURT: That sounds like you're wrapping your arms
14 around something. What are you doing?

10:16

15 A JUROR: I am putting different drawings and stuff
16 into the vault.17 THE COURT: Okay. So, you've -- you have a kind of a
18 clerical responsibility in storing documents, maintaining
19 documents, etcetera?

10:16

20 A JUROR: That's correct.

21 THE COURT: Sort of, I guess.

22 A JUROR: Yes.

23 THE COURT: And how do you know her? Did she hire you
24 or you work for her or how does that come about?

10:16

25 A JUROR: No. I've seen her around.

1 THE COURT: All right. And does she have any
2 relationship -- do you have any relationship with her at all
3 beyond just simply seeing her?

4 A JUROR: Not unless she calls to ask about documents.

5 THE COURT: Okay. That's what I mean.

6 A JUROR: But, no.

7 THE COURT: How do you relate to her, let's say on a
8 daily basis or weekly basis? Does she have you performing
9 certain roles and functions?

10 A JUROR: No, she does not.

11 THE COURT: Okay. Why would she call you, then?

12 A JUROR: In case they needed a document.

13 THE COURT: Okay. You would be the person who
14 retrieved that document for her or for anybody else in the
15 company or in that particular --

16 A JUROR: That's correct.

17 THE COURT: Okay. And have you done that for her on
18 few or many occasions?

19 A JUROR: On some occasions.

20 THE COURT: Are you still working and contracting with
21 BP now?

22 A JUROR: I am.

23 THE COURT: What's your number again?

24 A JUROR: Eighteen.

25 THE COURT: Number 18. All right. Thank you, ma'am.

1 If we need some other questions, we'll come back to you.

2 Anyone else?

3 All right. Do we need to take a break? Any of
4 you need to take a break?

5 A JUROR: No.

6 THE COURT: Not yet?

7 A JUROR: Let's keep going.

8 THE COURT: Anybody here diabetic? Several -- one or
9 two.

10 Do you need special lunch time and things like
11 that, Number 2?

12 A JUROR: No.

13 THE COURT: What about Number 15?

14 A JUROR: No.

15 THE COURT: Okay. All right. We'll take a break in
16 just a few minutes.

17 And let me just say, when you take your break,
18 just make sure you stay away from witnesses and parties.

19 And I'm going to ask that the parties -- that is,
20 the lawyers involved, that they kind of make way for you, so
21 you don't have to worry about running into them in the
22 facilities out there, and give you, you know, reign of the
23 floor. The lawyers go someplace else. All right?

24 Number 18 contracts with BP. Anybody else on the
25 panel contracting currently with BP?

10:18 1 How about in the past, you have a contractual or
2 employment relationship with BP in the past?

3 What about your -- okay. Number 23 and 24. And
4 I'm sure you have something on your questionnaire about this.

10:19 5 Would you please stand, 23, and just give me a
6 sense of what that was in the past?

7 A JUROR: It was just briefly in 1980 -- 1989, 1990.

8 THE COURT: All right. And you did what?

9 A JUROR: Inspection.

10:19 10 THE COURT: And as -- and give me some sense of what
11 that's about. Electrical --

12 A JUROR: No. Piping inspection, vessel inspection.

13 THE COURT: Did you leave on good terms or --

14 A JUROR: I think so, yes, sir.

10:19 15 THE COURT: Okay. Any problems with your employment
16 that caused you to leave?

17 A JUROR: Uh-uh. No, sir.

18 THE COURT: And I ask it that way because I would like
19 to know whether or not you've got an ax to grind with BP.

10:19 20 A JUROR: Say it again.

21 THE COURT: That came out funny, didn't it?

22 I said I just want to know if you've got an ax to
23 grind with BP.

24 A JUROR: No, sir.

10:19 25 THE COURT: None?

10:19 1 A JUROR: No, sir.

2 THE COURT: All right. And we -- and, certainly, it's
3 important that if you have some concerns about your employment
4 past there and how you were treated, you know, we need to
10:20 5 explore that. That's all. Nothing personal. We're not trying
6 to pick on you here or anything like that.

7 Do you now or continue to work in this kind of
8 capacity someplace else?

9 A JUROR: Yes, sir. I work contract right across the
10:20 10 street from BP, at Valero.

11 THE COURT: Okay. Was that contract work you were
12 doing at BP?

13 A JUROR: Yes, sir.

14 THE COURT: Okay. All right. And any other
10:20 15 connections at all that you can remember that you had with BP?

16 A JUROR: No, sir.

17 THE COURT: Family members?

18 A JUROR: (Shaking head).

19 THE COURT: All right. Thank you, sir. We'll contact
10:20 20 you if we need you.

21 Number 24?

22 A JUROR: I'm a retired operations manager for an
23 industrial gas company called Praxair. We entered into a
24 contract with BP Texas City refinery for building a hydrogen
10:20 25 plant, and then we went ahead and built two more as a result of

10:20 1 that.

2 THE COURT: Did they build it for you?

3 A JUROR: No. We built it for them.

4 THE COURT: I mean, did you build it for them? I'm
10:21 5 sorry.

6 A JUROR: We built it on their site. We built it on
7 their site.

8 THE COURT: Okay. And you completed that
9 approximately when?

10 A JUROR: About five years ago.

11 THE COURT: And, so, you built not one but what?
12 Three?

13 A JUROR: There's actually three on site right now.

14 THE COURT: Okay. And you participated in all three?

10:21 15 A JUROR: Two.

16 THE COURT: In two of those three?

17 Did you report to anybody at BP or did you report
18 up the ladder in your company?

19 A JUROR: No. We had a contact that I dealt with
10:21 20 regularly, Terry Harkenroad [phonetic], if that --

21 THE COURT: At BP?

22 A JUROR: At BP, yes.

23 THE COURT: And how did that go? Did you have a good
24 experience?

10:21 25 A JUROR: Very positive experience.

1 THE COURT: All right. So, I take that to mean that
2 there's no fallout as a result of that, as far as you're
3 concerned?

4 A JUROR: Not as far as I'm concerned.

5 THE COURT: And you didn't make so much money that you
6 would love to do them a favor either, did you?

7 A JUROR: No. Guarantee you that.

8 THE COURT: That's a funny way of putting it on the
9 other side. One side is to fall out with them for mistreating
10 you, and the other side is to love them so much that you'd like
11 to go back. So, there's no unfair advantage, is what I am
12 asking, for BP in this case, if you're on the panel?

13 A JUROR: That's fair to say.

14 THE COURT: Okay. Anything about that experience,
15 that you are aware of, that would cause you some concern about
16 your ability to be fair and impartial in this case?

17 A JUROR: I would have to say no. No.

18 THE COURT: All right. Did you at any point during
19 this -- when did this -- you said this ended what? About five
20 years ago?

21 A JUROR: We finished building the last plant about
22 three years ago. We started the first plant about five years
23 ago maybe.

24 THE COURT: I think we might need to come back to you
25 and ask you some individual questions, but we'll do that if

1 necessary. Thank you.

2 Any of you ever visit any particular plant, like
3 a BP plant -- oh, I'm sorry.

4 Number 9, yes?

5 A JUROR: Yes, sir. When I worked for GE Oil and Gas
6 I did some work at the BP plant in Wando, South Carolina, and
7 also at the Chocolate Bayou plant as a field service
8 representative for AC compressors.

9 THE COURT: Any experience there that would -- that
10 should cause the plaintiff or the defendant to be concerned
11 about your ability to be fair and impartial?

12 A JUROR: No, sir, not that I can think of.

13 THE COURT: You worked for another company, and
14 you-all had a contract to do work, I guess?

15 A JUROR: Yes. Yes, sir.

16 THE COURT: Was -- did your contract get fulfilled? I
17 mean, it was -- in other words, I'm asking were you terminated,
18 fired, anything of that nature.

19 A JUROR: No. I finished the job.

20 THE COURT: You finished it. All right.

21 And there's nothing about that, I gather, that
22 causes you any concern about your ability to be fair and
23 impartial?

24 A JUROR: No, sir.

25 THE COURT: All right. Thank you, sir.

1 I think I asked whether or not you had any
2 contract or -- I'm sorry. I still missed your hand. I
3 apologize.

4 A JUROR: I'm sorry, sir.

5 THE COURT: What's your number?

6 A JUROR: Thirty-four.

7 THE COURT: Yes, sir.

8 A JUROR: Just to let you know, I am a member of the
9 Port of Texas City security council.

10 THE COURT: Port of what?

11 A JUROR: Port of Texas City.

12 THE COURT: Oh, Texas City. Okay.

13 A JUROR: Yes, sir. The security council. BP also
14 has representatives there that's also members of that security
15 council. I just wanted --

16 THE COURT: What does the security council do, if it's
17 not a secret?

18 A JUROR: No, sir, it's not a secret.

19 THE COURT: What do you do?

20 A JUROR: All of the companies that are within the
21 Port of Texas City came together and created this security
22 council that oversees all the security of the Port of Texas
23 City. And I'm -- I'm a member there, as well as BP is,
24 Marathon --

25 THE COURT: You're concerned about sabotage?

10:25 1 A JUROR: Yes, sir, and access -- access to --

2 THE COURT: Access?

3 A JUROR: -- to the port.

4 THE COURT: Sure, sure. And, so, on that council are

10:25 5 members -- and what company did you say you worked for?

6 A JUROR: I work for Bollinger Shipyard.

7 THE COURT: Okay. On that council would be members

8 from -- or persons from other corporations --

9 A JUROR: Yes, sir.

10:25 10 THE COURT: -- who have an interest or like interest

11 in security of that -- of the plants and/or community?

12 A JUROR: Yes, sir.

13 THE COURT: So, what -- how many people make up this

14 council?

10:25 15 A JUROR: There are -- I believe there are 10 or 12

16 companies.

17 THE COURT: And who chairs the meetings?

18 A JUROR: Our chairman is Jason Haeley. He works for

19 the Port of Texas City. And co-chair is Dan Buchanan with

10:26 20 Marathon.

21 THE COURT: All right. And you, as you said, are,

22 quote, a member only of the council?

23 A JUROR: Yes, sir. Yes, sir.

24 THE COURT: You don't hold any position other than

10:26 25 member?

1 A JUROR: That's correct. I'm a voting member.

2 THE COURT: Okay. Does anybody from BP hold a
3 position of status to whom you would have to report --

4 A JUROR: No, sir.

5 THE COURT: -- or make any --

6 A JUROR: No, sir.

7 THE COURT: All right. And, so, how many BP personnel
8 are on this council?

9 A JUROR: Just one. There's one from each company.

10 THE COURT: And how often do you meet?

11 A JUROR: Quarterly. Actually, a little more often
12 than quarterly here lately.

13 THE COURT: Sure. And the relationship that you've
14 developed with the council in general and individual members,
15 do you play golf, eat dinner, and hang out with anyone in
16 particular?

17 A JUROR: No, not at all.

18 THE COURT: All right. Thank you, sir.

19 All right. Any other indirect relationships that
20 any of you have, as far as you know, with BP?

21 All right. I take it that -- well, I shouldn't
22 take it. Let me ask.

23 How many of you have children or grandchildren
24 that work for BP?

25 Children?

10:27 1 A JUROR: No.

2 THE COURT: Grandchildren?

3 A JUROR: No.

4 THE COURT: Husband?

10:27 5 A JUROR: Wife.

6 THE COURT: You wanted to hold up your hand, 3. Go

7 ahead.

8 A JUROR: Brother-in-law used to work for them. He

9 used to work for BP.

10:27 10 THE COURT: You were thinking I might get to that at

11 some point?

12 A JUROR: Yeah.

13 THE COURT: Brother-in-law. All right. And he works

14 for BP?

10:27 15 A JUROR: He used to work for BP in Texas City.

16 THE COURT: How long and when did he work for them?

17 A JUROR: Up until about five years -- four or five

18 years ago.

19 THE COURT: What was the term? How many years, do you

10:27 20 think?

21 A JUROR: Eight, nine years.

22 THE COURT: Eight to nine years ending probably in

23 2003, 2004 --

24 A JUROR: Yes.

10:27 25 THE COURT: -- somewhere in there?

10:27

1 A JUROR: Uh-huh.

2 THE COURT: All right. Did he ever report anything to
3 you about his working conditions or say anything to you about
4 any of the plants, that you recollect?

10:28

5 A JUROR: Yes, all the time.

6 THE COURT: All the time. And, so, let me just come
7 back to you on that.

8 Number -- who was that it -- oh, Number 1 --

9 A JUROR: (Shaking head).

10:28

10 THE COURT: -- you were about to hold your hand up. I
11 didn't get to the right relationship. It's not brother-in-law,
12 not sister-in-law?

13 A JUROR: No, sir. You said "children," and I raised
14 my hand. None.

10:28

15 THE COURT: None?

16 A JUROR: None.

17 THE COURT: How many, if any, of you have ever worked
18 in a refinery? Three?

19 And what's your number, sir?

10:28

20 A JUROR: Fifteen. Fifteen.

21 THE COURT: Fifteen.

22 And Number 12, 9, 13, and 14.

23 A JUROR: Thirty-three, too.

24 THE COURT: I'm sorry. Yeah, 32 and 33, I believe.

10:29

25 A JUROR: Does that include chemical plants?

1 THE COURT: Absolutely.

2 All right. Well, refineries, do -- and I -- that
3 would probably be my next, refineries, chemical plants.

4 What's your number, sir?

5 A JUROR: Thirteen.

6 THE COURT: Thirteen? And 14 and I saw two -- yeah, I
7 got 14.

8 What's your number sir?

9 A JUROR: Twenty-seven.

10 THE COURT: Twenty-seven?

11 A JUROR: Twenty-seven.

12 THE COURT: And?

13 A JUROR: Thirty.

14 THE COURT: Thirty. Okay. Quite a number of you.

15 Oh, I'm sorry. I did get 23 and 24, I think.

16 Maybe I didn't. Let me write that down, 23 and 24. I guess I
17 assumed that for some reason.

18 Have any of you ever been a -- have any of you
19 ever been a -- what you consider to be a victim of some kind of
20 accident at a refinery or chemical plant or shipyard or
21 wherever you might have worked in that area?

22 You were there, something happened, and you were
23 either injured, made ill, or had some -- something to occur
24 that is memorable to you in that respect?

25 None of you? All right.

10:30 1 A JUROR: I have.

2 THE COURT: Okay. Number 9?

3 A JUROR: Well, it was just a minor accident; but,
4 yeah, I had a problem with my hand. There was no consequences
10:30 5 from it, just a cut; but it was an accident.

6 THE COURT: All right. And that was an accident in
7 the sense of your handling something or --

8 A JUROR: Yes. I was assembling a compressor.

9 THE COURT: Okay. And something happened?

10:30 10 A JUROR: Right. I --

11 THE COURT: All right. What about chemical releases?
12 Number 23, I'm sorry.

13 A JUROR: Just I burnt my hand is basically it, had
14 first aid and --

10:30 15 THE COURT: Okay. What about a chemical release or an
16 explosion or something of that nature? We need to know if you
17 were involved in any of that.

18 Number 30, you were? Which was it?

19 Please stand.

10:30 20 A JUROR: Well, I work in a chlorine production plant
21 where we have chlorine releases on occasion and, obviously,
22 exposures that go along with that.

23 THE COURT: Sure. Have you been treated for that in
24 the past?

10:31 25 A JUROR: No, I have not.

10:31 1 THE COURT: And how long have you worked at that
2 plant?

3 A JUROR: Twenty-five years.

4 THE COURT: Twenty-five years. Have you witnessed or
10:31 5 seen what others might claim to be injuries that they have
6 sustained as a result of any release?

7 A JUROR: Numerous times.

8 THE COURT: Yeah. In other words, there are other
9 people who might have been someplace there and said they
10:31 10 experienced something; you might have been in the same place or
11 a different place and say you did not?

12 A JUROR: Exactly.

13 THE COURT: All right. All right. Thank you.

14 Number 14?

10:31 15 A JUROR: I'm the same. I work in a plant that has
16 had chemical releases.

17 THE COURT: And were you exposed?

18 A JUROR: No.

19 THE COURT: But you have seen people who claim they
10:31 20 were, or not?

21 A JUROR: No. No.

22 THE COURT: Okay. All right.

23 And as far as those releases are concerned, what
24 I am trying to find out is whether or not anybody claimed to
10:32 25 have been injured or in any way made ill by the release.

10:32 1 A JUROR: No.

2 THE COURT: Okay. Thank you.

3 I saw another hand back there. Number 15?

4 A JUROR: Yes. I've been in releases and explosions,
10:32 5 and I also was -- I worked at Shell. I was exposed to some --
6 some release on some acid that -- but I was treated and
7 released. It wasn't nothing, any lawsuit or anything else, a
8 sustained medical condition or anything like that.

9 THE COURT: And that occurred about when?

10:32 10 A JUROR: Probably back around '85.

11 THE COURT: Okay. And, so, there was nothing that
12 carried over; and, even today, you would not --

13 A JUROR: No.

14 THE COURT: Okay. Very good. Thank you.

10:32 15 Anyone else?

16 All right. How many of you have worked with a
17 lawyer before as a secretary, paralegal, associate lawyer?

18 Number 3, what did you do?

19 A JUROR: I worked for --

10:33 20 THE COURT: Please stand. I'm sorry.

21 A JUROR: I worked for the law firm for Exxon Mobil.
22 I did --

23 THE COURT: Exxon Mobil has its own legal unit?

24 A JUROR: Right.

10:33 25 THE COURT: So, this is in-house lawyers?

10:33 1 A JUROR: Right.

2 THE COURT: Okay. What did you do?

3 A JUROR: I prepared documents for patent --

4 THE COURT: Filings?

10:33 5 A JUROR: Yes.

6 THE COURT: Okay. And, so, did you have technical
7 skills or were they simply fill in the blank?

8 And I don't want to make it seem light, but I
9 want to know what your knowledge is.

10:33 10 A JUROR: I don't have extensive knowledge, because I
11 was only doing temp work there for two years at the law firm.

12 THE COURT: So, it was temporary work for two years?

13 A JUROR: Uh-huh.

14 THE COURT: Did you get involved in any of the
10:33 15 litigation where, for example, Exxon's patents or any other
16 patents might have been the subject of the litigation?

17 A JUROR: I pulled the documents and stuff that they
18 needed for it.

19 THE COURT: Okay.

10:34 20 A JUROR: I typed some of the documents.

21 THE COURT: Okay. Thank you very much.

22 Anyone else?

23 Number 32?

24 A JUROR: I worked for Gibson Dunn and Crutcher one
10:34 25 summer in Alaska following the Exxon Valdez spill. Basically

1 just -- I was in college, just made copies of lots and lots of
2 documents around that.

3 THE COURT: All right. And you don't have any
4 particular expertise in the chemicals or what was done there;
5 you were mainly helping to put together, I guess, the
6 documentation and maintain it?

7 A JUROR: Yeah. My involvement or angle on that was
8 basically -- I was a college student, was looking to explore
9 whether I wanted to be a lawyer at that point in time.

10 My dad was COO of Alyeska Pipeline, which BP is a
11 part of; but he came up through Atlantic Richfield, which
12 subsequently has been bought by BP. But my dad never worked
13 for BP. He was always with Arco.

14 THE COURT: Is he still there?

15 A JUROR: No. He's retired.

16 The only very indirect connection is that BP
17 probably, in some form or another, has stayed associated with
18 his retirement, because of him being an Arco employee.

19 THE COURT: Sure. They eventually bought the company.

20 Well, don't keep us in suspense. What did you
21 decide?

22 A JUROR: What did I decide about the -- the Alyeska
23 event?

24 THE COURT: No, about becoming a lawyer.

25 A JUROR: Oh.

1 THE COURT: Alaska? Man, I'm talking about being a
2 lawyer.

3 A JUROR: Alaska is beautiful. That would be my
4 number one thing.

5 No. I moved into finance and banking.

6 THE COURT: Okay. Closer to the money than being a
7 lawyer, isn't it?

8 Okay. Thank you very much.

9 Anyone else?

10 All right. Oh, I'm sorry. Yes, ma'am?
11 Number --

12 A JUROR: Twenty-one.

13 THE COURT: Twenty-one. Okay.

14 I'll get these numbers right after awhile.

15 A JUROR: I've done some reception work for an
16 attorney by the name of Bill de la Garza and Kenneth Kay.

17 THE COURT: Any you didn't expand that into becoming a
18 paralegal, did you?

19 A JUROR: No, sir.

20 THE COURT: It was mainly --

21 A JUROR: Just answering phones mostly.

22 THE COURT: Okay. Thank you very much.

23 Anyone else?

24 Number 23?

25 There's certain numbers that keep coming up.

1 Twenty-three, go ahead, sir.

2 A JUROR: I also went up on the north slope during the
3 spill for --

4 THE COURT: Did you?

5 A JUROR: -- for BP --

6 THE COURT: Okay.

7 A JUROR: -- and did inspection work on the pipelines.

8 THE COURT: Okay. And how long were you there?

9 A JUROR: Approximately three weeks.

10 THE COURT: Okay. And that was as a contractor, was
11 it not?

12 A JUROR: Right, yeah.

13 THE COURT: So, when that contract -- or when your
14 services were no longer needed, you either -- either enjoyed
15 the beauty of Alaska or you came back to the lower 48, as they
16 sometimes call it?

17 A JUROR: Correct.

18 THE COURT: Okay. Anything about that experience that
19 would cause you any concern about your ability to be fair and
20 impartial?

21 A JUROR: No, sir.

22 THE COURT: And what I mean by that is your
23 relationship in that contract with BP.

24 A JUROR: No, sir.

25 THE COURT: Okay. Thank you, sir.

10:36

1 A JUROR: Your Honor, I have --

2 THE COURT: Yes, sir. I'm sorry, Number 1.

3 A JUROR: When I lived in Alaska, BP hired our little
4 company to come in and provide flu shots --

10:37

5 THE COURT: Oh, okay. How about that?

6 A JUROR: -- one time. They normally had done it
7 in-house; but they couldn't get any, and I did. So -- but it
8 was in their headquarters building in Anchorage.

9 THE COURT: Okay.

10:37

10 A JUROR: That was a long time ago, sir.

11 THE COURT: So, what do you do now?

12 A JUROR: I have my own little company here on the
13 island.

14 THE COURT: Okay. Good deal. Not giving flu shots,
15 are you?

10:37

16 A JUROR: No, sir.

17 THE COURT: I know there was some concern about the
18 availability. I was just curious about that.

19 Anything in your experience in that contract that
20 causes you any concern about your ability to be fair and
21 impartial to BP or to the plaintiff?

10:37

22 A JUROR: No, sir. It's all positive.

23 THE COURT: Thank you.

24 A JUROR: They paid their bill.

10:37

25 THE COURT: All right. Any other hands?

1 You have a small business, you say, here on the
2 island, Number 1?

3 A JUROR: Yes, sir, just started it.

4 THE COURT: What does it do?

5 A JUROR: We install an interior window system for
6 insulation and noise reduction.

7 THE COURT: Okay. And is this owned by you and others
8 or --

9 A JUROR: I'm the dealer for --

10 THE COURT: You're the dealer -- okay -- for the
11 manufacturer.

12 A JUROR: Yes, sir. This is my territory here.

13 THE COURT: Okay. Thank you.

14 Anyone else on the first row in business for
15 themselves right now?

16 One through 6?

17 How about 7 through 12?

18 Thirteen through 20 something?

19 You're in business for yourself? Number 15?

20 A JUROR: Fifteen.

21 THE COURT: What business are you in?

22 A JUROR: I own an insulation company --

23 THE COURT: Okay.

24 A JUROR: -- that -- I work mostly on chill water
25 piping, and I have done some industrial insulation inside

1 refineries.

2 And I spent 30 years working in refineries all up
3 and down the Gulf Coast but never in BP.

4 THE COURT: Okay. Very good. Thank you.

5 Any other persons own their own business? I'll
6 just go for the whole block.

7 Yes, ma'am?

8 A JUROR: Twenty-eight.

9 THE COURT: Number --

10 A JUROR: Twenty-eight.

11 THE COURT: -- 28. Yes, ma'am, what kind of business
12 are you in?

13 A JUROR: I own a real estate company.

14 THE COURT: Real estate?

15 A JUROR: (Nodding head).

16 THE COURT: All right. You don't have any -- any
17 property that you're managing or handling for BP or any of its
18 affiliates, that you're aware of?

19 A JUROR: No, sir.

20 THE COURT: Okay. Thank you.

21 Do any of you know or recall the event that the
22 plaintiffs claim occurred on April 19 at the BP plant in Texas
23 City? Do any of you recall?

24 And I'm talking about now newspapers that you
25 might have read or -- or any other thing that triggers that

1 particular date in your mind. Plaintiffs claim this event
2 occurred on April 19, 2007, at the BP plant in Texas City.

3 All right. Let me ask Number -- what's your
4 number, sir? Number 35, is it?

5 A JUROR: Thirty-four?

6 THE COURT: Thirty-four, would you please stand?

7 A JUROR: Yes, sir.

8 THE COURT: On the council, would you get reports from
9 various entities about anything of this nature, on the council?

10 A JUROR: Normally not. We do have an emergency alert
11 system --

12 THE COURT: Right.

13 A JUROR: -- but it's normally for security related
14 events.

15 THE COURT: So, a breach of security would trigger
16 this alarm, such --

17 A JUROR: Yes, sir. Yes, sir. If there was a bad,
18 let's say, release or something, they would also use that same
19 alert system and that's --

20 THE COURT: Or an explosion, that might set it off, as
21 well?

22 A JUROR: Yes, sir. Yes, sir. But I --

23 THE COURT: Okay. But that's not something that you
24 would necessarily take up in your meeting unless it was a
25 security issue?

1 A JUROR: That's correct.

2 THE COURT: Okay. Thank you, sir.

3 How many of you, if any, have ever suffered an
4 injury by inhaling some chemical? I just want to see a show of
5 hands.

6 You know, I remember an incident where I stuck my
7 nose in something in the chemistry lab in high school. Any of
8 you ever do that?

9 You know, the teacher tells you, "Do not stick
10 your nose in that vial" or in that whatever. And the first
11 thing you do when the teacher turns his back is you stick your
12 nose in the vial and you come up with something almost like a
13 chemical pneumonia if you're not careful, like a hydrogen
14 something or whatever.

15 You didn't have that experience. What did you
16 stick your nose in?

17 A JUROR: Chlorine.

18 THE COURT: Chlorine. Okay. Chlorine. Hydrochloric
19 acid will do that, won't it?

20 A JUROR: And I dropped the vial, and they evacuated
21 the wing.

22 THE COURT: Okay.

23 A JUROR: And better --

24 THE COURT: That's your experience?

25 A JUROR: Yes.

1 THE COURT: Let's see if anyone else has had a -- not
2 necessarily a lab experience in high school but any experience
3 where you had an inhalation of a chemical, like a hydrochloric
4 acid or something, that would -- or any other chemical, for
5 that matter, that might cause you some distress.

6 Number -- what's your number, sir?

7 A JUROR: Fifteen.

8 THE COURT: Number 15?

9 A JUROR: Chlorine, benzene, phenol, different
10 exposure for --

11 THE COURT: I would expect those who worked in a plant
12 probably have smelled something at some point or had some
13 experience at some point. But I'm talking primarily about
14 something that's pretty strong, in your mind.

15 Number 15.

16 What was your number, sir?

17 A JUROR: Fifteen.

18 THE COURT: No. I got you, 15.

19 But you're Number --

20 A JUROR: Thirteen.

21 THE COURT: Thirteen, Number 13.

22 A JUROR: I got in some ammonia.

23 THE COURT: Ammonia?

24 A JUROR: Yes, sir.

25 THE COURT: And I've had that experience with ammonia.

1 I'm trying to figure out how to keep the dogs and the opossums
2 out of my garbage. I think I got worst of it.

3 What's your number, ma'am?

4 A JUROR: Number 17.

5 THE COURT: Number 17?

6 A JUROR: One of our students at Queens Intermediate
7 brought -- his older brother left a -- something from the war
8 on the refrigerator. He brought it to school and released
9 the -- I don't know what it was. I can't remember what it was
10 called. It was a few years back. So, I had that chemical
11 experience. We just had to evacuate the school, and all the
12 kids had to be treated and --

13 THE COURT: All right. All right. Thank you.

14 I saw a hand or two over on this side. I think
15 Number -- please stand.

16 A JUROR: Twenty-one.

17 THE COURT: Twenty-one?

18 A JUROR: Is asbestos a --

19 THE COURT: I don't think -- I don't know. I don't
20 know how you would -- I think asbestos is more of -- it
21 certainly can be airborne, but I don't know that you have a
22 chemical reaction.

23 A JUROR: Well, they were replacing the ceiling at the
24 courthouse, on the fourth floor; and it was dropping on our
25 heads. And the district clerk called OSHA; and they shut us

1 down within two hours, made us go home.

2 THE COURT: All right. But that's the kind of
3 experience you had?

4 A JUROR: Yes.

5 THE COURT: Number 23?

6 A JUROR: Phosgene. Phosgene.

7 THE COURT: Was that the chemical?

8 A JUROR: Right, that's the chemical.

9 THE COURT: Was there any reaction to it?

10 A JUROR: Just -- yeah, burning sensation of the nose,
11 I mean --

12 THE COURT: All right. Thank you, sir.

13 Oh, I'm sorry. Yes, Number 20?

14 A JUROR: Twenty. Teargas in the marine corps, it was
15 part of our training.

16 THE COURT: Boy, you sure are waking up a lot of
17 memories. So, they made you take your gas mask off, too?

18 A JUROR: Oh, yes, sir.

19 THE COURT: I suspect that happened to everybody in
20 the military; so, I'm not going to ask that question.

21 Beyond those, have any of you suffered any
22 injuries that you now are being treated for?

23 All right. Thank you.

24 Have any of you had any bad experience -- and I'm
25 just opening up the whole universe of thinking here -- had any

10:45 1 bad experience that you attribute to BP?

2 All right. How about any other oil company, a
3 bad experience that you attribute to any oil company, that
4 you're aware of? Other than the price of gas, of course, the
10:45 5 up and down of gas prices.

6 How many of you are members of the -- currently
7 or past members of a labor union? And I'm asking for a
8 particular reason, because I want to know whether or not you've
9 lobbied for, had sought legislation, negotiated a contract that
10:46 10 might impact employees in a certain way, union employees and
11 non union employees for that matter.

12 Number 10?

13 A JUROR: Well, the -- it's a public employees union.

14 THE COURT: SCIU or something like that, Service
10:46 15 Employees or one of the other?

16 A JUROR: One of those. I don't remember the name.

17 THE COURT: What did you do?

18 A JUROR: Nothing. Nothing. I'm just a member; so, I
19 get information. And they lobby on our behalf with the
10:46 20 legislation.

21 THE COURT: Okay. Very good.

22 I saw a hand in back.

23 A JUROR: Twenty-seven.

24 THE COURT: Twenty-seven?

10:46 25 A JUROR: You want union members or just --

1 THE COURT: If you are a union member or was a union
2 member.

3 A JUROR: Still am.

4 THE COURT: You were and still are?

5 A JUROR: (Nodding head).

6 THE COURT: Do you participate in any of the lobbying
7 legislation or negotiations?

8 A JUROR: No, sir.

9 THE COURT: Okay. Thank you, sir.

10 By that, I guess I should expand it to dealing in
11 regulations. Do you have anything to do with regulations at
12 the company?

13 A JUROR: No, sir.

14 THE COURT: All right. Same with you, Number 10?

15 A JUROR: Regulations?

16 THE COURT: Oh, I don't know. I guess I'm thinking
17 more of a refinery, but you are not in that area.

18 A JUROR: No. We regulate child care.

19 THE COURT: Okay. Let's leave that for a minute,
20 then, because that would not necessarily be relevant.

21 How many, if any, of you have ever worked for a
22 regulatory agency, other than Number 10, and particularly where
23 you would be regulating industry or something that that
24 industry might be doing? Any of you done that?

25 I take it from your silence you have not.

10:47 1 How many of you have been plaintiffs in a
2 lawsuit? Let's see a show of hands if you filed a lawsuit for
3 some reason.

4 Your neighbor keeps cutting your yard and he cuts
10:47 5 it too close and he keeps -- and he won't cut a straight line,
6 whatever the situation is, I want to know if you've been
7 involved in some litigation.

8 Number 10?

9 A JUROR: In a personal capacity, not in a --

10:48 10 THE COURT: Please stand. You project better, and I
11 can hear. I have --

12 A JUROR: In a personal --

13 THE COURT: I spent six years in a tank in the
14 military --

10:48 15 A JUROR: I'm sorry.

16 THE COURT: -- and sometimes I don't hear well. So, I
17 apologize for that.

18 But go ahead.

19 A JUROR: Well, in a personal capacity, only in a
10:48 20 divorce, uncontested divorce.

21 THE COURT: Okay. Yeah, I understand that.

22 I saw another hand. Number -- yes, ma'am, please
23 stand, Number 17.

24 A JUROR: I was involved in a car accident where I had
10:48 25 to -- I sued the other person's insurance company in order to

1 pay my medical bills.

2 THE COURT: Did you settle it?

3 A JUROR: It settled.

4 THE COURT: Did you go to trial? How did it turn out?

5 A JUROR: It was settled out of court.

6 THE COURT: All right. Did you hire a lawyer?

7 A JUROR: Yes, I did.

8 THE COURT: Thank you very much.

9 How many of you have been a defendant -- oh, I'm
10 sorry.

11 A JUROR: I don't know how relevant it is.

12 THE COURT: Number 32?

13 A JUROR: Yeah. Back, trying to get a payment from a
14 fellow student that hit my car, had to, you know, file in small
15 claims court. Never went to trial, finally paid me.

16 THE COURT: Well, here's what I am getting at. You
17 had that experience as a plaintiff. That's what I am concerned
18 about.

19 I shouldn't say "concerned." That's what I'm
20 getting at. You had that experience as a plaintiff.

21 I also want to know if any of you have had an
22 experience as a defendant, you've been sued. All right?

23 Let's stand and deliver.

24 Tell me what -- tell me how you got sued.

25 A JUROR: It didn't go to court. It got dropped.

10:49 1 THE COURT: It's the real estate business?

2 A JUROR: Correct.

3 THE COURT: That sometimes occurs, where people think
4 that their contracts have been --

10:49 5 A JUROR: It was another broker wanting a commission
6 for something. So, when my attorney responded, he dropped the
7 case.

8 THE COURT: Oh, okay. And you did hire an attorney,
9 and you've been a defendant.

10:49 10 Now, anyone else?

11 Okay. Please have a seat.

12 Number 9?

13 A JUROR: Sir, my -- well, I don't know if I was sued.
14 My son was in a wreck; and, of course, I had the insurance. He
10:49 15 had to go to court. I didn't but --

16 THE COURT: You didn't hire an attorney?

17 A JUROR: Well, it was insurance company's attorney
18 that was representing him.

19 THE COURT: All right.

10:50 20 Number 10?

21 A JUROR: Yes. I was sued in small claims court by a
22 woman who ran into me. And she was on a Moped, and she ran
23 into my car.

24 THE COURT: All right. Did you hire a lawyer, or did
10:50 25 you act as your own?

10:50 1 A JUROR: The insurance company represented me.

2 THE COURT: Okay.

3 Number 33?

4 A JUROR: Last year, before the Thanksgiving Day last
10:50 5 year --

6 THE COURT: Okay.

7 A JUROR: -- I go to the parking lot for going to
8 lunch. That time there was one small maybe 3 inch length of
9 pipe under the wheel, above the ground. I hit in the pipe, and
10 I fell and this -- all this area is broken.

11 THE COURT: You tripped over a pipe --

12 A JUROR: Yeah, had three teeth come out.

13 THE COURT: -- and lost your top teeth?

14 A JUROR: Immediately, the secretary of the department
10:50 15 called the ambulance. They take me to Hermann Memorial. They
16 didn't do anything. They only that -- they fix it back. They
17 didn't do anything. After that, I start having too much pain.

18 Then one week after, I got another appointment in
19 another hospital. Then I going and personally I pay the money,
10:51 20 everything.

21 The immediate -- that emergency room department,
22 they charge more than \$5,000. My personal insurance, they paid
23 3,000. Now, again and again they are sending the bill. Now I
24 am suffering for that paying the payment.

10:51 25 THE COURT: So, are you being sued?

10:51 1 A JUROR: Company not pay. Actually, company that
2 day, our safety man, a safety inspector, he didn't make the
3 accident report or anything.

4 THE COURT: Did you get sued? Or did you sue them?

10:51 5 A JUROR: No. I didn't pay the ambulance bill. I
6 paid the remaining balance.

7 THE COURT: I heard that part. I'm just trying to
8 figure out if you got sued. Did you get sued by the people for
9 the balance of the money?

10:51 10 A JUROR: No. They didn't pay.

11 THE COURT: Did you sue the company where you tripped
12 over the pipe?

13 A JUROR: No.

14 THE COURT: Okay. But you had this -- this is a claim
10:52 15 that you're talking about your experience?

16 A JUROR: Yes.

17 THE COURT: Okay. Very good. Thank you, sir.

18 Number -- let's go --

19 A JUROR: Twenty-one.

10:52 20 THE COURT: Twenty-one.

21 A JUROR: I forgot I was involved in a class action
22 lawsuit against State Farm.

23 THE COURT: And that was when?

24 A JUROR: I was in a car accident, and they didn't
10:52 25 pay --

1 THE COURT: How long ago was that?

2 A JUROR: 1994.

3 THE COURT: Okay. And this was kind of a rebate of
4 premium or something?

5 A JUROR: Yes. If you got in a wreck with an at-fault
6 driver and they only had liability, my hundred thousand dollars
7 should have kicked in. And State Farm did not give me that
8 money, and a class action lawsuit was started a few years
9 later.

10 THE COURT: And you participated in that?

11 A JUROR: Yes, sir. I had to go to Dallas before some
12 judges, and I was awarded some more money.

13 THE COURT: Okay. Very good. Thank you.

14 Number 7?

15 A JUROR: I was involved in a hit and run about a year
16 and a half ago, and it's now going through the courts right
17 now.

18 THE COURT: Okay.

19 A JUROR: As far as I know, the attorney's told me
20 that he doesn't need me to be a witness. They're trying to
21 settle it.

22 THE COURT: Okay. You -- have you -- have your claims
23 or if there were any injuries or damages, has all that been
24 resolved?

25 A JUROR: Yes.

1 THE COURT: So, the hit and run part had to do with
2 making sure that the person who did it is held responsible?

3 A JUROR: Exactly.

4 THE COURT: And you're not -- you won't be needed in
5 that except as a witness maybe?

6 A JUROR: Maybe.

7 THE COURT: All right. Anything about that experience
8 that causes you any concern about your ability to be fair and
9 impartial here?

10 A JUROR: No.

11 THE COURT: Okay. Thank you very much.

12 Let's see. No other hands?

13 You-all have a way of sticking your hand up right
14 after I drop my head to look for the next question. I don't
15 know if you-all are testing me or not.

16 All right. Let's see. I'm just about close to
17 the end of my questions. And we might have some other
18 questions to ask you, but I'm probably going to need to take a
19 break. How many of you have a degree in chemistry, biology, or
20 environmental science? Let's see a show of hands.

21 What's your degree in, sir, Number 30?

22 A JUROR: Associate's degree in chemistry.

23 THE COURT: Okay. Anyone else?

24 All right. Do you have any familiarity --
25 Associate's degree in chemistry, do you handle any chemicals

1 other than -- we're away from the classroom now. Do you handle
2 chemicals on a daily or weekly basis?

3 A JUROR: Only in the fact that I'm in a plant that
4 produces them. I don't handle --

5 THE COURT: Are you familiar with hydrogen sulfide?

6 A JUROR: Yes.

7 THE COURT: Do you-all produce that or make that in
8 the making of other chemicals?

9 A JUROR: Not in my plants.

10 THE COURT: How are you familiar with it?

11 A JUROR: Just from chemistry and previous lab work.

12 THE COURT: All right. Thank you, sir.

13 Anyone else? Anyone have any experience handling
14 or working with hydrogen sulfide?

15 All right. Is that clock right up there?

16 MR. BUZBEE: It's an hour off.

17 MR. GALBRAITH: I don't think it's been updated.

18 A JUROR: It's not.

19 THE COURT: It's not quite noon? It's 11:00 o'clock,
20 close to 11:00.

21 A JUROR: It's almost 11:00.

22 THE COURT: Okay. Good shot. Good thing.

23 All right. I tell you what. Let's take about a
24 15 minute break, give you a chance to stretch your legs.

25 Please, lawyers, keep your seats for the time

10:55 1 being, keep your seats.

2 The lawyers are more anxious than I am. I want
3 you-all to be out of here before they get out of here. Let's
4 take about a 15 minute break. Let's make it 11:00 -- well,
10:55 5 that clock is past 12:00. Let's make it 12:15. That's about
6 20 minutes, give everybody a chance to kind of walk and stretch
7 and take advantage of any facilities we have on the floor.

8 And when you're done, come back here and take a
9 seat. That means I don't want to have to look for you, right?
10:56 10 You're not being excused. Come back here; otherwise, I'll have
11 to come looking for you.

12 Thank you very much. Go ahead and take that
13 break.

14 *(Recess was taken from 10:56 to 11:23 a.m.)*

11:23 15 *(Jury present)*

16 THE COURT: All right. Please be seated.

17 All right, ladies and gentlemen. We have a
18 few -- I have a few other questions I need to go through,
19 discuss with you.

11:24 20 Let me ask, do you have any questions of me
21 before I go further? Any questions you need to ask of me?

22 You don't know any questions to ask of me yet?

23 Okay. Well, let me just say this. If you think
24 somehow you're going to escape being on this panel, you should
11:24 25 rethink that. You should. Because generally what happens is

1 people get selected and the first thing that happens is they
2 sit in the box and they say, "You know what? I thought I
3 was -- I really didn't think I was going to get picked. Judge,
4 let me tell you, I have two tickets to Las Vegas Thursday."

5 And then I'm going to say, "Give them to me,"
6 because now you've permitted yourself to get selected. Not
7 that you wouldn't have been selected, in the first place; but
8 you've permitted yourself to get selected in a situation where
9 you thought you could avoid being selected just by keeping your
10 mouth shut. That never gets you out of anything.

11 And I say, "It never gets you out of anything."
12 I don't mean you're getting into something here. This is going
13 to be a wonderful experience. I'm looking forward to it.

14 So, how many of you, by raising your hand, are
15 anticipating, just can't wait to get on this panel? Let me see
16 a show of hands.

17 All right. Well, I'll tell you this. You will
18 be selected and you will serve on this panel. Not because I'm
19 saying so, but what I am saying is if you have something you
20 need to ask me or something you need to bring to my attention,
21 this is the time to do it. Because, otherwise, I have no basis
22 upon which to speak with the lawyers about whether there is a
23 basis for you to be excused. I have no basis to believe or
24 know you, for example, have surgery or somebody in your family
25 has surgery scheduled for tomorrow morning. I have no way of

11:25 1 knowing it. I can't read your minds.

2 And, so, that's -- this is critical and important
3 and the case itself and every case, including any case that you
4 might have been involved in, is so important. The process of
11:26 5 truth finding begins with you. Doesn't sound right, does it?
6 But that's right.

7 If you can't be honest and forthright and get on
8 the panel and do your job, how do you expect the witnesses to
9 be honest and truthful?

11:26 10 You can't. Because you take essentially the same
11 oath that they take. Your oath is to be true to the evidence
12 that is presented. Their oath is to give you truthful
13 evidence. So, it works together. And that's the mystery that
14 none of us have ever been able to figure out, and we don't want
11:26 15 to.

16 But it is a great way to appreciate the justice
17 system; that is, all of these steps are dependent and they lead
18 to the next step. When we start with you, we start with the
19 fact finding. Actually, starting with me. I've taken an oath,
11:26 20 and my job is to make sure I do what I'm supposed to do in the
21 correct way.

22 We select another set of judges, and those judges
23 ought to do their job. And then the witnesses come in, and
24 they're to speak the truth as they understand it. Now,
11:27 25 sometimes people speak things, we say, "That's not true"; and

11:27 1 it may not be true or it may be the way they understand it or
2 have seen it. Two people can look at the same thing and see
3 things differently. And their disagreement doesn't mean that
4 either of them is intentionally misleading you, but it does
11:27 5 mean that you have to be a discerning person.

6 And I guarantee you, you are discerning if you
7 raise children. Because you know when you're getting to the
8 bottom of something when your children come to you and make
9 statements -- and even other relatives and friends. And, so,
11:27 10 we know how to discern truth. And we can look people in the
11 eyes, we can look them over, we can listen to what they say and
12 how they say it, and we can tell when people are being straight
13 with us. That's your job.

14 It's not a hard job, but it is a job that
11:27 15 requires patience. And most of all it requires paying
16 attention. So, your attention is more important than anything
17 else in this case. The things we tell our children -- that is,
18 sit up, pay attention -- that's what I will be saying to you
19 throughout this case. And you watch me and I'll watch you and
11:28 20 we'll all watch the witnesses and that's how we'll get through
21 this trial.

22 So, you don't have any questions? Okay. Good
23 thing.

24 Let's talk about something that sometimes seems
11:28 25 to be difficult for us in civil cases, difficult because we

1 don't all understand it, difficult because until we have a
2 situation that's personal to us we don't think about it too
3 much. We generally have a knee-jerk reaction to certain
4 things. And that's damages.

5 The plaintiffs in this case are not here to get
6 tickets to a game or earn some kind of a prize. They're here
7 because they claim they've been injured and they're claiming
8 that they're entitled to damages.

9 Now, here's the point. If the plaintiffs prevail
10 in their case, you are obligated to consider what an
11 appropriate amount of damages are. You don't have an option if
12 they prevail. If you find the plaintiffs have prevailed, you
13 have the duty to go to the next section and say what damages,
14 if any, are appropriate in this case.

15 And they can't be based on how you feel. They
16 have to be based on the evidence. They have to be based upon
17 the evidence. So, when you consider the evidence, not that
18 you're going to figure out at the end, "Well, I don't want the
19 plaintiffs to win. Therefore, I won't find that there was any
20 fault or any liability." That's not the way to do it.

21 You make sure you follow the instructions of the
22 Court; that is, you answer the questions that are presented to
23 you, in the order that they are presented; and you follow those
24 instructions as you go through. It's important to follow the
25 instructions that the Court gives you.

11:29 1 Isn't that true, Number 19?

2 A JUROR: Yes, sir.

3 THE COURT: All right. Because instructions mean that
4 we continue in a progressive way to get to where we're trying
11:29 5 to go. We're on a journey, and the journey is to get to the
6 end of the case and make a resolution of a problem that exists
7 between plaintiffs and defendants. Not to become a part of the
8 problem but to resolve the problem. So, that's the push back
9 you and I have to do. We push back from the plaintiffs, we
11:30 10 push back from the defendants, and we make a determination as
11 to where the facts are, where the truth lies as best we can
12 discern it from the evidence that is being presented.

13 So, when it comes to damages, we shouldn't be
14 concerned about what the plaintiffs ask for or what the
11:30 15 defendants say they should not receive or whether the
16 defendants say they shouldn't have any damages at all. We
17 should be concerned about the evidence, and the evidence should
18 lead us on a path to a conclusion.

19 Whether that's favorable to the plaintiffs or to
11:30 20 the defendants is really not our concern right now. Because
21 when you finish this case you should be able to walk away and
22 say, "I didn't do anything for the plaintiffs. I didn't do
23 anything for the defendants. I did something for the proper
24 and just administration of justice." And if the plaintiffs
11:30 25 prevail, so be it; and if the defendants prevail, so be it.

1 That's what I have -- that's what I do as a
2 judge. I try to make sure that I don't get so close to the
3 problem that I become the problem. Now, having said that,
4 here's the question regarding damages.

5 The law permits the plaintiff not only to ask for
6 but, if proven, to receive damages for what we call "actual
7 damages."

8 Now, "actual damages," in most of our language
9 and understanding, might certainly seem to be, "Well, how
10 much -- what was the doctor bill, what was the this or what" --
11 the specific items that we can put our hands on. They're
12 tangible. We can identify a piece of paper and say, "These are
13 actual damages." That's what the plaintiff is entitled to.

14 But the plaintiff is entitled for you to consider
15 more than what you see. The plaintiff is entitled for you to
16 consider the whole panorama of damages that the law permits,
17 whether it be mental anguish, whether it be punitive damages,
18 whether it be these other kinds of compensatory damages that
19 are sometimes difficult to determine.

20 Just because it's difficult doesn't mean you
21 shouldn't do it. Just because it's difficult doesn't mean the
22 plaintiff is not entitled to damages. And the fact that it's
23 easy doesn't mean the plaintiff is entitled to damages either.

24 What I am suggesting to you is that it's
25 important that you, as you consider the question -- assuming

11:32 1 that you get to it, as you consider the question of damages,
2 you have to be open to the rule of law that says all of the
3 above elements may be considered in determining what damages
4 ought to be.

11:32 5 Now, I know -- and I'm giving you this little
6 speech because I know that some of you have already answered
7 questions in certain respects. For example, you might say, "I
8 don't believe in punitive damages." Well, it's been believed
9 in for over 2,500 years. Five hundred years before the turn
11:33 10 the century, punitive damages existed. You kill my cow
11 intentionally, you gore my ox intentionally, you might have to
12 give me two oxes.

13 Not because I'm entitled to two oxes. Because
14 your conduct is such that you should not be able to do what you
11:33 15 did and simply replace what you destroyed. That's the rule of
16 law. That's the law that we adopted, you know, 200 years ago,
17 that we brought in from England and England brought in from
18 some time eternity past, it seems.

19 So, we're not talking about something that's been
11:33 20 invented. We're not talking about damages that somebody made
21 up. We're talking about what the law permits. And that's your
22 job, to determine whether or not the plaintiff, first, is
23 entitled to recover and then, second, to determine whether or
24 not and what damages, if any, should be paid. And those are
11:33 25 the steps.

1 You don't go to the damages before you decide
2 that the plaintiff is entitled to recover. You determine
3 things in order. Just like brain surgery, auto mechanics, and
4 other kinds of disciplines that we recognize and respect. The
5 law has its own discipline, and we must be bound by it.

6 Now, having said that, I know that some of you
7 have answered questions in such a way that might lead me to
8 believe that you cannot or will not -- not "cannot." "Cannot"
9 sounds as though you just -- even if I bent your hand, you
10 wouldn't do it. That's not the kind of "cannot" that I'm
11 talking about.

12 The "cannot" that I'm talking about is that you
13 believe or don't believe that certain damages ought to be
14 awarded. Sobeit. Nothing wrong with that belief. Some years
15 ago, when the speed limit was 70 miles per hour, I believed in
16 that. Then they changed it. I had to change my belief. No, I
17 didn't. I changed my conduct. That's what I am talking about.
18 See, I don't speed 70 miles per hour. Not because I can't, and
19 I don't do it because I want to. I don't do it because there
20 is something that tells me that I shouldn't do it; and that is
21 the rule has changed.

22 Now, that's all we're talking about here when we
23 talk about damages. That's all we're talking about when we're
24 talking about finding for or against the plaintiff. We're
25 talking about the rule. And once we understand that the rule

1 of law controls what our personal beliefs are, what our
2 personal, political, or social beliefs are, whatever our
3 cultural beliefs are, those things are pushed aside so that we
4 can keep the rule of law in place.

5 If you recall my comments at the beginning, we
6 have to have a rule of law; otherwise, we don't have a rule of
7 law, we have rules of men. And men cannot rule without a rule
8 of law. That's where we are.

9 So, having said that, there's some specific
10 questions we might have asked -- might ask of some of you. But
11 let me just ask -- I know that some of you have already made a
12 statement. But let me ask, of those who don't believe or have
13 such a strong belief that, for example, mental anguish or
14 punitive damages can never be awarded, let me see a show of
15 hands, they should never be awarded.

16 Okay. Number 25, I think it is.

17 All right. Anyone else? Number 1?

18 All right. Anyone else?

19 And I'm talking about never be awarded, there are
20 no circumstances under which they should be awarded. Okay?

21 I'm sorry. Number 1, you change your mind a
22 little bit?

23 A JUROR: "Never" is --

24 THE COURT: I don't mean changed your mind, but --

25 A JUROR: "Never" is an absolute. Seldom -- no, sir.

11:36 1 There would be some instances where I would consider that they
2 might be appropriate.

3 THE COURT: Well, and whether or not they would be
4 appropriate would depend upon the situation, wouldn't it?

11:37 5 A JUROR: Yes, sir, it sure would.

6 THE COURT: Thank you.

7 Number 25, absolutely?

8 A JUROR: Absolutely.

9 THE COURT: You're fixed?

11:37 10 A JUROR: (Nodding head).

11 THE COURT: Okay. I don't want to change your mind.
12 And by that I mean if I have to persuade you that you need to
13 do something because the law requires it then you shouldn't be
14 on the panel. That's the point. Because you have to be open
11:37 15 to the rule of law in order to qualify as a juror. You have to
16 be open to all of the law as instructed by the Court in order
17 to be -- in order to be a juror.

18 Otherwise, you're not serving as a juror. You're
19 going to get on the panel and you're going to twist and
11:37 20 persuade or attempt to persuade someone else that your point of
21 view is correct, and then you become more than a judge. You
22 become the arbiter of all events.

23 All right. Any questions from any of you?

24 Let me ask the lawyers to approach the bench,
11:38 25 please.

11:38 1 (At the bench with all counsel)

2 THE COURT: Let's see. One of you stand there so they
3 can't read my lips. In Houston they've got people in the
4 courtroom that can read your lips, and you have to be very
11:38 5 careful what you say or how you say it.

6 Now, let me say this, gentlemen. I did not ask
7 those questions to try to figure out how to overcome anybody's
8 answers. I said it -- I did what I did to try to figure out
9 and make sure I could clear up maybe some misconceptions or
11:38 10 misunderstandings.

11 We'll go through these numbers perhaps -- us,
12 we'll go through those numbers and figure out whether or not we
13 should disqualify any or all of the names that you've given,
14 any or all of the names that you, the defendant, has given.
11:39 15 And then if we have some concerns about any of the rulings, we
16 can perhaps bring some people in individually and talk with
17 them.

18 Now, what I need to know -- and I think you're
19 pushing something at me.

11:39 20 MR. BUZBEE: I wasn't -- well, yes, sir. I didn't
21 know if you had that and you just chose -- you didn't want to
22 do it. But that's something you told us I could file, and I
23 did.

24 THE COURT: Yeah, you did. But I don't ask certain
11:39 25 questions. Let me see what these are.

11:39 1 MR. BUZBEE: Okay. All right.

2 THE COURT: How many --

3 MR. BUZBEE: Two.

4 THE COURT: -- how many people -- how many angels can
11:39 5 stand on a pin head?

6 MR. BUZBEE: Well, you know how I am, your Honor.

7 THE COURT: The question is, "How many of you believe
8 that when you work at a plant you should just expect to be
9 exposed to chemicals and should not sue for it?" That's a
11:39 10 stiff question.

11 Second question, "How many of you fear that if BP
12 is sued too much it will close down and jobs and tax revenues
13 would be lost?"

14 We don't have any employees here. Let me think
11:40 15 about that.

16 MR. BUZBEE: Yes, sir.

17 THE COURT: Do you have any questions?

18 MR. GALBRAITH: I think those questions are
19 argumentative. For example, the second one, I don't know that
11:40 20 anybody could say "no" to that. If somebody is sued too much,
21 would it jeopardize their business? The obvious answer is
22 "yes," to anybody. I don't think they're honest inquiries into
23 attitudes. I think they're argumentative.

24 But I do want to know just what is the judge's
11:40 25 feeling now about certain jurors, because we've got certain

11:40 1 things either clarified or established. For example, what is
2 your thought about the people who answered your questions,
3 indicating that they had medical situations of significance?
4 And there weren't a whole bunch of them.

11:41 5 THE COURT: No. I think there would be one or two
6 hardships.

7 MR. GALBRAITH: It was 3, 7, 19, and 33 that indicated
8 they had either a major medical problems -- 3 had a surgery; 33
9 had a surgery; 19 had the carotid scan and the MRI later this
11:41 10 week, Thursday, I believe; and then 7 had the doctor's letter
11 saying she can't sit and she has lumbar problems. She also is
12 the one who is the single parent who does not have alternative
13 arrangements.

14 THE COURT: That's Number 7?

11:41 15 MR. GALBRAITH: Yes.

16 THE COURT: No. I intend to deal with those.

17 MR. GALBRAITH: Can we do that now?

18 THE COURT: No. What I want to do is to make sure I
19 get your minds ready to deal with what I would call strikes for
11:41 20 cause, what you believe to be strikes for cause.

21 When you've given me those numbers that you think
22 should be struck for cause, if I agree with you, then I'll
23 strike them. If I disagree with you, we might have to discuss
24 some of those.

11:42 25 MR. BUZBEE: Okay.

1 THE COURT: Once I make that determination, then I
2 will move next to the numbers that deal with -- that we deal
3 with as far as hardships are concerned.

4 MR. GALBRAITH: Okay.

5 THE COURT: Just to comfort your mind a little bit,
6 there's no way we're going to let Number 7 on this panel, if
7 that's what you're concerned about. We don't want her to have
8 a nervous breakdown.

9 MR. BUZBEE: Number 8. She's Number 8. The one that
10 was crying is Number 8.

11 THE COURT: Oh, is she Number 8? Okay.

12 MR. GALBRAITH: Yeah.

13 THE COURT: Okay. That's right.

14 MR. GALBRAITH: Seven and eight are --

15 MR. BUZBEE: Nobody wants her on the panel.

16 THE COURT: Well, I thought Number 7, but I'll look at
17 Number 7 again. But whatever her number is, the one that seems
18 to have a serious concern about her child and her work
19 environment.

20 MR. GALBRAITH: That is 7, the one with the child and
21 the lumbar excuse.

22 Eight was the one who was the breadwinner and her
23 bosses said they weren't going to pay her, at The Frog.

24 MR. BUZBEE: She was crying and --

25 THE COURT: Okay. Well, Number 8, then, I'll change

1 my -- Number 8, for sure Number 8 is not going to be on the
2 panel. So --

3 MR. BUZBEE: Outside of the questionnaire, which I
4 guess we'll bring up, but just based on your questions, I would
5 move to strike for cause Number 25 --

6 THE COURT: Hold on just a minute. Let me write those
7 numbers down so that I can -- I'll just write them down, first.

8 Number 25?

9 MR. BUZBEE: Number 25 on the basis of -- even after,
10 I thought, a really appropriate lecture on what the law
11 requires, Number 25 still said, "Under no circumstances."

12 THE COURT: Okay.

13 MR. BUZBEE: And then I would strike for cause
14 Number 18. If we need to question her, do so. But she is the
15 one that works with document retention at BP and she clearly
16 has some affinity Ms. Clark or whatever her name is.

17 What else based on questions?

18 And those are just based on your questions. And,
19 frankly, I would -- because I don't think you can rehabilitate
20 a juror, I think, based on questions, the previous numbers I've
21 set forward all should be stricken for cause, in my view. But
22 we can talk about those individuals if you choose.

23 THE COURT: Okay. Did you have any particular ones
24 that you want to strike for cause?

25 MR. GALBRAITH: Yes, your Honor. The ones who

1 indicated as a result of their experiences prior to this trial
2 that they have arrived at strong personal convictions that, in
3 their mind, cause them to conclude that they could not be fair
4 to BP are Panel Members Number 4, 7, 19, and 33.

5 THE COURT: So, 4, 7, 19, and 33. Are you familiar
6 with those numbers?

7 MR. BUZBEE: Yes, sir.

8 THE COURT: And what number are you referring to,
9 Mr. Galbraith?

10 MR. GALBRAITH: Question 46. For example,
11 Number 19 --

12 THE COURT: Here's Number 4. Let's look at that one.

13 MR. GALBRAITH: Okay.

14 THE COURT: Number 46, "Is there anything about what
15 you've read" -- let's see -- "believe that you could not be
16 fair to BP?"

17 And they say, "Yes," and they say, "TV."

18 Okay. That's the type of question you're talking
19 about?

20 MR. GALBRAITH: Yes, your Honor. Number -- well, the
21 point is, as we've talked about before, BP has been the subject
22 of quite a bit of publicity and --

23 THE COURT: Sure. Sure. No, I'm not questioning
24 anything that you've said at this point. I'm just simply
25 trying to get a sense of what you understand those -- the basis

11:45 1 for the cause to be.

2 MR. GALBRAITH: Right.

3 THE COURT: So, right now, except for your general
4 "for cause" claims you have made, specifically the plaintiff
11:45 5 would claim 25 and 18 and the defendant would claim 4, 7, 19
6 and 33.

7 MR. BUZBEE: Right.

8 But he's basing his not on your oral voir dire
9 but on the questionnaire.

11:45 10 THE COURT: Certainly.

11 MR. BUZBEE: I just want to point out again that --
12 since he's arguing the questionnaire, that -- the ones I've
13 previously listed to you.

14 THE COURT: I'm not sure that we've had any case law
11:45 15 on this. Here's my concern. And I'm not sure that the case
16 law should -- should ever turn on this, except where there's a
17 strong showing that the person who is answering has an
18 understanding of the rule of law and then sticks with an answer
19 given.

11:46 20 Because we're asking them at a point in time when
21 certainly they've been asked to give truthful answers, under
22 oath, to questions. They've been qualified. In other words,
23 the jurors are brought in and they are qualified to serve as
24 jurors; and then they're questioned, and then we qualify them
11:46 25 to serve as jurors.

1 So, I'm not sure where the law would be on that.
2 But I think that perhaps a little bit of discussion about these
3 other -- whether they're on the paper or in the courtroom --
4 disqualifications might be appropriate.

5 MR. BUZBEE: Okay.

6 MR. GALBRAITH: Well --

7 THE COURT: Anything else, other than the hardships,
8 that we'll get to later on?

9 MR. GALBRAITH: Well --

10 THE COURT: We're just going to have to have a
11 conference. That's what we're going to do. We're going to
12 have a conference in a few minutes.

13 But I just want to do two things. I want to kind
14 of get a sense of where you are on these disqualifications; but
15 I also want to get a sense of what other questions, if any, we
16 need to cover, some other areas we need to cover. I know that
17 I haven't tried to cover all of the general areas, but I tried
18 to make sure I covered those areas that are tough and difficult
19 for both sides.

20 MR. GALBRAITH: Nothing further, your Honor.

21 MR. BUZBEE: Nothing from this side.

22 THE COURT: Just ask these two?

23 MR. BUZBEE: Just those two, yes, sir.

24 THE COURT: Yeah, right. I'm going to look over them.

25 MR. BUZBEE: Okay.

1 THE COURT: Okay. Thank you.

2 (*In open court*)

3 THE COURT: All right. Ladies and gentlemen, just a
4 couple of other areas; and then here's what I think we should
5 do. Even though you had a break a few minutes ago, I'm going
6 to have to give you another break so that I can confer with the
7 lawyers about the panel. And this is not unusual.

8 We have to discuss any claims of hardship; we
9 have to discuss any issues that might be of concern to either
10 side -- or either side in this case as it relates to questions
11 that you might have answered. And we need to do that outside
12 of your presence, obviously. So, that's what we need to do
13 after I complete this. And that probably might take 15 to 30
14 minutes.

15 Then the lawyers are going to make their strikes.
16 They'll make their strikes, and I mean panel strikes. They'll
17 turn those strike lists in to me, or at least to the clerk of
18 court. We will then compile the jury -- or then compose the
19 jury, seat that panel, swear the panel in, and release the
20 remainder of you to return to your humdrum jobs. That's what I
21 call them.

22 This is an exciting world we're in. You better
23 take advantage of it and appreciate it. You know, I've learned
24 more about other people's business than I know about my own. I
25 know more about mechanics, and I never fixed a car. I can talk

11:49 1 about computers, and I can't even start one up. But I know how
2 to do all this stuff because lawyers have taught me. So, this
3 is a great world. And this is an opportunity, a learning
4 experience.

11:49 5 Now, back to the more serious. I think I asked
6 this question earlier. Do you have any questions you need to
7 ask of me?

8 If not, let me give you a few more instructions.
9 In a lawsuit where the claim is negligence or a claim is for
11:49 10 damages, we have what I said, plaintiff on one side and the
11 defendant on the other side. It is the plaintiff's burden of
12 proof; that is, the plaintiff must prove the worth -- I'll use
13 that term -- of its lawsuit by a standard. And that standard
14 is called "preponderance of the evidence."

11:50 15 Now, a "preponderance of the evidence" simply
16 means the greater weight and degree of credible or believable
17 evidence.

18 Am I right, Number 10?

19 A JUROR: Yes, you are, your Honor.

11:50 20 THE COURT: All right. I need a witness, and I just
21 need to make sure I'm talking to someone who understands. And
22 then she can help me to help you understand, as well.

23 So, that greater weight and degree of credible
24 evidence is what the plaintiff's burden is, unlike a criminal
11:50 25 case, where the burden of proof is proof beyond a reasonable

11:50 1 doubt.

2 Or, if you ever watch Perry Mason, proof beyond a
3 shadow of a doubt, that's not the standard.

4 How many of you ever saw Perry Mason? Did he
11:50 5 ever lose a case, by the way?

6 A JUROR: One.

7 THE COURT: One. And that was when he -- they took
8 him off the air.

9 But the standard of proof in a civil case is
11:50 10 "preponderance of the evidence." And, so, we need to make sure
11 that you don't disagree with that principle. Anyone disagree?

12 I can't change it. Congress has to change it.
13 It's been the rule of law since the beginning of time. And I
14 don't know that Congress would change it. But that's the rule
11:51 15 of law. Anyone disagree with it?

16 All right. So, here's the way the matter
17 proceeds. How many of you work a crossword puzzle?

18 All right. Good. Because this is what we're
19 dealing with. We're dealing with pieces of evidence. And you
11:51 20 can't cheat, now. You can't look at the picture on the box.
21 Because in this crossword puzzle, the lawyers have the
22 responsibility of giving you the pieces.

23 You and I have the responsibility of making sure
24 that they're fitting in the place that they should fit and that
11:51 25 the picture turns out either the way that the plaintiff claims

11:51 1 that it is or, maybe not, maybe it's the way that the defendant
2 says it is.

3 But you can see by that that you will not have
4 all of the, quote, evidence at one time. We can't just drop it
11:51 5 into your brain and say, "All right. Go off and think about
6 this." You get it piece by piece. That means witness by
7 witness, question by question, answer by answer. That's how
8 the evidence comes to you, in piecemeal.

9 The plaintiff, having the burden of proof, has
11:52 10 the privilege and the right to go forward first. Now, that
11 doesn't give the plaintiff an advantage with you or with me,
12 because your job is to wait until you hear all of the evidence
13 before you make up your mind about anything. And you should be
14 open to discussion with your other jurors at the time that you
11:52 15 are sent to deliberate.

16 So, let's go back to the beginning. Plaintiff
17 has the burden of proof. Plaintiff gets to put on his
18 witnesses -- or their witnesses first. The defense gets to
19 cross-examine or question those witnesses.

11:52 20 At some point the defense will put on witnesses.
21 The plaintiff gets a chance to cross-examine those witnesses.
22 And that back and forth is what makes for the putting together
23 of this puzzle. That's how this evidence comes together.

24 At the end of the case, you should have
11:53 25 sufficient pieces to make the puzzle work one way or the other.

11:53 1 You should have sufficient pieces of evidence, but you have to
2 be patient and you have to wait and you have to listen and then
3 you have to talk with each other at the end of the case.
4 Anyone can't do that?

11:53 5 All right. We have opening statements at the
6 front side of it; we have the testimony and the evidence in the
7 middle; and then we have closing statements at the end. And
8 those of you who have had a chance to serve on juries
9 understand that process, whether it's a civil case or a
11:53 10 criminal case, that the bookends are opening and closing.

11 Now, there may be times when I need to rule
12 against certain evidence. I'm not ruling against BP, and I'm
13 not ruling against the plaintiff. I'm making a ruling based on
14 a rules of evidence and my best judgment as to whether or not
11:54 15 that evidence should be admitted under the rules. So, the
16 ruling is to protect you from something that the law does not
17 permit either side -- or the other side, maybe, to present in
18 the manner that it's being presented. And it should not
19 reflect upon the lawyers at all.

11:54 20 Lawyers have a duty to try to get in evidence
21 what they believe to be appropriate, even if it disagrees --
22 even if they disagree with me about that. That's not my
23 problem, and that's not your problem. The problem is if you
24 take it to mean that somehow one side or the other is, quote,
11:54 25 not getting his case across or losing it and you make up your

11:54 1 mind based on the action in the courtroom. Then you will be
2 lost. You will be lost and the case will not be properly
3 decided.

4 So, you'll base your verdict upon the evidence
11:55 5 that is admitted in the courtroom, not based upon what you
6 heard or saw someplace else -- and I certainly hope you
7 don't -- not based upon any investigation that you've done --
8 and you shouldn't, because you take an oath not to -- and not
9 based upon your going on the Internet and looking up
11:55 10 something -- because you don't have the right or duty to do
11 that -- not based upon what your husband or wife told you you
12 should think when you go home this evening. That's not right.

13 It's this one thing: the evidence in the
14 courtroom.

11:55 15 Anyone disagree with that, those principles, in
16 other words?

17 All right. Have I missed anything, Number 10?

18 A JUROR: Of course, not, your Honor.

19 THE COURT: All right. She'll tell me later what I
11:55 20 did miss, probably.

21 All right. I think what we need to do at this
22 point is to have my little session with the lawyers, and we're
23 going to step into this little side room here. And don't
24 you-all tear the place up while we're gone. You can stand and
11:56 25 take a break or we can --

11:56 1 A JUROR: Eat?

2 THE COURT: I'm sorry?

3 Today is the day that you ought to order pizza,
4 right? You don't want to go anywhere today.

11:56 5 Here's what I think we ought to do. Would you
6 prefer taking about an hour and getting lunch and come back
7 rather than sitting here while we work through this?

8 A JUROR: Yes, sir.

9 THE COURT: Do you speak for the entire body?

11:56 10 I don't have a problem with that. And I think it
11 may be wise because -- we do not have a cafeteria in this
12 building, by the way. So, you're going to have to bring your
13 lunch -- and I'm saying this for the benefit of the jurors.
14 You're going to have to bring your lunch or you're going to
11:56 15 have to go someplace quick because we will not be taking long
16 lunch breaks once we get this case started.

17 So, is it five minutes of 12:00 right now? Is
18 that what the time is?

19 How long a break do you take for lunch, Number 1?

11:57 20 A JUROR: Twenty minutes.

21 THE COURT: All right. That will get you out of the
22 building. Then you turn around and come back in.

23 A JUROR: My dog, I left her inside because it's
24 raining today. And I would like to make sure my carpets are --

11:57 25 THE COURT: Yeah, I agree with you on that one. How

1 long does it take you to take lunch, Number -- you haven't said
2 anything. Stand up.

3 A JUROR: Me?

4 THE COURT: Yes.

5 A JUROR: Number 35.

6 THE COURT: Thirty-five. I haven't heard you say a
7 word. How long --

8 A JUROR: Thirty minutes.

9 THE COURT: Where is the closest place?

10 A JUROR: I don't know here in Galveston. Sometimes
11 it takes longer. You know, you ask me, I would rather stay
12 here, let you guys get your process over with, and then pick
13 the jury, then let the rest of us go.

14 THE COURT: I see. It's going to take 30 or 40
15 minutes for us to do that whether you're here or not.

16 A JUROR: Okay. We can do that.

17 THE COURT: So, yeah, I understand that choice. You
18 can certainly do that.

19 Anyone else have any comment about this?

20 Number 2?

21 A JUROR: I'm -- I'm not saying a thing.

22 THE COURT: Well, if I authorize one of you to speak
23 for the entire group, who would that be?

24 A JUROR: This one.

25 THE COURT: Number -- what's your number?

11:58 1 A JUROR: Seventeen.

2 THE COURT: Number 17, please stand.

3 A JUROR: Well, we only get 30 minutes in school
4 systems, everybody. So, we can -- you can go. Sometimes I
11:58 5 leave where I work and come back, and I do it within the 30
6 minutes. So, we can do it now, we can all go.

7 THE COURT: All right. Here's what we're going to do,
8 then.

9 Well, let me ask one other question. Is there
11:58 10 anyone on this panel who has any religious or conscientious
11 objection or basis why they cannot sit as a juror in this case?

12 Now, look around. Anybody on this panel you
13 know? Do you know any of the other people on this panel? Do
14 you work together, shop together, attend the same church,
11:59 15 synagogue?

16 Number 7, who do you know?

17 A JUROR: The gentlemen behind me, George.

18 THE COURT: Who is George?

19 A JUROR: Number 13.

11:59 20 THE COURT: George, you're not going to tell us you
21 know Number 7?

22 A JUROR: I know Number 7.

23 THE COURT: Please stand. Your number is?

24 A JUROR: Nineteen.

11:59 25 THE COURT: Nineteen.

1 All right. How do you know Number 7? You want
2 to tell me privately or publicly?

3 A JUROR: No.

4 THE COURT: Okay.

5 A JUROR: I had to have shoulder surgery about five
6 years ago, and she was my physical therapist --

7 THE COURT: Okay.

8 A JUROR: -- in my recuperation.

9 THE COURT: Okay. Is that how you know him, Number 7?

10 A JUROR: Yes, sir.

11 THE COURT: You're a physical therapist?

12 A JUROR: Yes.

13 THE COURT: That's what you're going to say?

14 A JUROR: Yes.

15 THE COURT: Has that series of sessions concluded?

16 A JUROR: Oh, yes, sir.

17 A JUROR: Yes.

18 THE COURT: Okay. And let me ask, if you two are
19 serving on the same panel, can the other jurors on that panel
20 trust you to be fair and open minded and not come together in a
21 way that would be detrimental to their thinking?

22 In other words, it's kind of like having a
23 sergeant and a private in the military and the sergeant stands
24 up and the private salutes. Okay?

25 So, is there anybody on the panel that --

12:00 1 That's not the relationship you have, right?

2 A JUROR: Correct.

3 THE COURT: I mean, you're certainly independent of
4 each other?

12:00 5 A JUROR: Right.

6 THE COURT: And you can think for yourself, obviously,
7 both of you. The question is whether or not there's any
8 influence, any basis for you to have to be influencing each
9 other in a situation like this.

12:00 10 A JUROR: No influence.

11 THE COURT: None?

12 A JUROR: None.

13 A JUROR: No.

14 THE COURT: Okay. Thank you.

12:00 15 Number 20 -- is that 30? What's your number,
16 sir?

17 A JUROR: Number 30.

18 THE COURT: Number 30, who is it that you know?

19 A JUROR: I know C [REDACTED] A [REDACTED].

12:00 20 A JUROR: Number 14.

21 A JUROR: We work together, same company.

22 THE COURT: Where do you-all work?

23 A JUROR: Dow Chemical.

24 A JUROR: Dow Chemical.

12:00 25 THE COURT: Okay. And does she report to you or you

1 report to her?

2 A JUROR: Neither.

3 THE COURT: All right. Different departments?

4 A JUROR: Yes.

5 THE COURT: But you-all see each other from time to
6 time?

7 A JUROR: Actually, her office is across from my
8 boss'.

9 THE COURT: Okay. And that's how you would --

10 A JUROR: I haven't seen him in five years, probably,
11 or before that. So --

12 THE COURT: But that's how you would see each other --

13 A JUROR: Yes.

14 THE COURT: -- you would be visiting, for example,
15 needing to go to the boss or something in that building or that
16 location --

17 A JUROR: No.

18 THE COURT: -- and you would see her or she, in turn,
19 would be coming to your department?

20 A JUROR: I have a different supervisor. So, it's
21 just --

22 THE COURT: Yeah, but when I say "see you," I mean
23 just in passing, I guess.

24 A JUROR: Right.

25 THE COURT: You're in an office someplace and he

12:01 1 passes and that's how you would see him?

2 A JUROR: That's right.

3 A JUROR: That's it.

4 THE COURT: But you'll have no working relationship
12:01 5 with each other that brings you together for any functions.

6 A JUROR: No.

7 THE COURT: I'm saying it, but I'm asking really.

8 A JUROR: No.

9 THE COURT: In other words, you don't have to do work
12:01 10 and present it to her and then she then approves it --

11 A JUROR: No.

12 THE COURT: -- gets it back to you or disapproves it
13 and that kind of thing.

14 A JUROR: No.

12:01 15 A JUROR: Not at all.

16 THE COURT: What about if your boss left?

17 A JUROR: No, nothing there either.

18 THE COURT: Okay.

19 A JUROR: It's a huge company. So --

12:02 20 THE COURT: But it's a small world.

21 A JUROR: That's true.

22 THE COURT: And we seem to keep coming together. I
23 remember one panel I had a most unlikely thing, but I didn't
24 ask that -- I almost didn't ask that question. And it turns
12:02 25 out that there were two people on the panel, who were dating.

1 I mean, how would you figure that? You get -- you know, the
2 lady you had lunch with or dinner last night, she's on the
3 panel with you. That's kind of a strange small world
4 situation.

5 So, we never really know who we're on the panel
6 with unless we ask. So, I guess I should go a step further.

7 Are you related to anybody on this panel?
8 Anybody related to anyone else?

9 How about this one. Anybody on the panel -- is
10 there anybody on the panel who in the past has been in charge
11 of or served as a supervisor for any other person on the panel?

12 All right. I think I've just about exhausted
13 that, then.

14 Okay. It's high noon, and that's a good time to
15 take about a 30 or 40 minute break. Feel free to leave the
16 building and get lunch if you choose to and come back.

17 I think there's a snack bar maybe on the second
18 floor. Am I correct?

19 THE CASE MANAGER: Vending machines.

20 THE COURT: Vending machines, not a snack bar, vending
21 machines on the second floor if you're of a mind to do that.

22 But I need you back in here no later than
23 1:00 o'clock. You've got to be back at 1:00 o'clock. If you
24 don't think you can do that, don't leave. All right?

25 All right. Let's do it now.

1 *(Recess was taken from 12:03 to 12:42 p.m.)*

2 *(Jury not present)*

3 *(At the bench with all counsel).*

4 THE COURT: Okay. Gentlemen, if you'd get your
1 2 : 4 2 5 paperwork, please. Start with the long list, I think. And
6 that's the plaintiffs' list.

7 Number 1?

8 MR. BUZBEE: Me?

9 THE COURT: Yes.

1 2 : 4 3 10 MR. BUZBEE: Your Honor, we -- based on the answers to
11 questionnaire, we had moved -- I'm making this record of
12 course. We had moved to strike for cause Numbers 1 --

13 THE COURT: Let's deal with Number 1.

14 MR. BUZBEE: Okay.

1 2 : 4 3 15 THE COURT: What's your basis for it now, the answer
16 to Question Number what?

17 MR. BUZBEE: The answer to Question Number 49 in his
18 questionnaire, where he's asked about punitive damages and his
19 response is that they are totally absurd.

1 2 : 4 3 20 THE COURT: Okay.

21 MR. BUZBEE: Moreover, when asked about whether he
22 would award even if instructed by this Court to award mental
23 anguish damages, he said no.

24 And then the Court -- I gave -- gave what I
1 2 : 4 3 25 considered to be an appropriate lecture on what the damages

1 are, what the purpose of them are. And even then, when he
2 stood up, you could tell his mind had not been changed.

3 And I think he's a strike for cause.

4 THE COURT: Any responses?

5 MR. GALBRAITH: Yes, your Honor. We don't think he's
6 a strike for cause. He's, we think, the classic example of
7 someone who gave an answer on the questionnaire that was
8 strong, one of the more strong answers in the questionnaire, at
9 a time before anything had been explained to him. And, yet,
10 after the Court had delivered instructions to Juror Number 1
11 and clarified what we were asking, he's the guy who said, "I
12 can't say never. I have to say it depends on the evidence."

13 Well, that's exactly what we ask of a juror.
14 That's not a strike for cause. That's not a disqualification.
15 If, after explanation of the Court's instructions he says, "It
16 depends on the evidence," that's exactly what we're looking
17 for. And, so, we don't think that should be granted.

18 THE COURT: Well, we'll go, then, to Number 5.

19 I'll make my ruling at the end of all of this.
20 I'm not going to rule --

21 I think Number 5 is next, Mr. Buzbee.

22 MR. BUZBEE: Yes, sir. Number 5, I'm going to
23 withdraw.

24 THE COURT: Okay. Number 9?

25 MR. BUZBEE: Number 9?

1 THE COURT: Uh-huh.

2 MR. BUZBEE: Same issue, your Honor. Question 47, a
3 juror -- Venire Panel Member Number 9's questionnaire, when
4 asked about mental anguish damages, even if instructed by the
5 judge and supported by the evidence, the answer was, "No." And
6 I think that is a classic case of someone making their mind up
7 before we ever start. So, in other words, one of the largest
8 elements of damage that we're going to ask for, this juror has
9 already made up her mind on.

10 And I'd also mention this, your Honor. I think
11 there was -- there was a reference as to whether questionnaires
12 such as this one are sufficient for strikes for cause and --

13 THE COURT: Go ahead.

14 MR. BUZBEE: -- and I believe they are, and I believe
15 there's cases to support that. As you probably know, I've used
16 questionnaires many times; and they've always been sufficient
17 for a strike for cause. So, I only reference that because you
18 did make --

19 THE COURT: You you're at Number 9, and you're looking
20 at Question Number what?

21 MR. BUZBEE: Forty-seven, where it asks --

22 THE COURT: Okay. Forty-seven.

23 MR. BUZBEE: Yes, sir.

24 THE COURT: Okay.

25 All right. Response?

1 MR. GALBRAITH: I do have a response, your Honor.
2 This is another one of those where the questionnaire shows some
3 lack of understanding. It's qualified even by the panel
4 member, Number 9, prior to this Court's instructions. But this
5 is another example of one who, after you gave those
6 instructions, you asked them, "Could you comply with the rule
7 of law as I have outlined it, as I have explained it? And if
8 you have any problem with that, let me know now," and Number 9
9 did not. And as you have said, "I take it by your silence that
10 you don't have a problem with doing what we instruct." And
11 this is another example of that.

12 THE COURT: All right. Number 11?

13 MR. BUZBEE: Number 11, your Honor, Question -- and,
14 again, in the questionnaire, Number 47, when asked about mental
15 anguish, flat out, "No."

16 And then in Question 49, when asked about
17 punitive damages, this is what this person said, "No, I do not
18 agree," exclamation point, "Should not be fined to punish that
19 person, because they would not have gotten hurt or planned a
20 situation to hurt themselves or another employee."

21 So, this person is essentially saying, in two of
22 the critical elements of damages in this case, they've made
23 there mind up before we've put in one document.

24 THE COURT: All right. Response.

25 MR. GALBRAITH: This is another example of the same

1 principle, because there are so many people who answer
2 questions one way without instruction or explanation and, after
3 the Court's instructions, they indicated their understanding
4 that they -- that it would depend on the circumstances and that
5 they could follow the Court's instructions and that they could
6 award damages. This is another one of those.

7 The explanation in 49 is a little bit instructive
8 to me. In other words, they're wrestling with it at that time.
9 They have not -- they're searching for that explanation. That
10 explanation shows that it's a true inquiry on their part.
11 After you have explained it to them, they didn't have a problem
12 with it.

13 There's no -- there should be no strike for cause
14 for that juror.

15 THE COURT: Number 12?

16 MR. BUZBEE: Number 12.

17 THE COURT: I believe that's the next one.

18 MR. BUZBEE: Yes, sir. Your Honor, I'm withdrawing
19 12.

20 THE COURT: All right. Number --

21 MR. BUZBEE: Thirteen.

22 THE COURT: -- 13.

23 MR. GALBRAITH: So, pardon me. For my record, we got
24 1, 9, 11 so far?

25 THE COURT: Yeah. And Number 12, withdrawn. We're

1 going now to Number 13.

2 MR. BUZBEE: I want to -- I'm going to withdraw that
3 one, I think, your Honor.

4 THE COURT: Number 13?

5 MR. BUZBEE: Yes, sir.

6 THE COURT: All right.

7 MR. BUZBEE: I mean, I think there is a distinction in
8 these questionnaires, with the people who -- who aren't
9 clear -- for instance, just as an example, Number 13, on this
10 mental anguish question, he said "Not sure of definition."

11 Now, there is a person who's considering the
12 question, is unclear; whereas, there's other people that
13 understand it and simply say, "I'm not going to give these
14 damages."

15 THE COURT: All right. Number 17.

16 MR. BUZBEE: Seventeen, your Honor, again, Question 47
17 asked about mental anguish damages and also asked about damages
18 for physical pain and suffering. Even if instructed by the
19 Court, this person has already decided that he or she will not
20 give those types of damages.

21 THE COURT: Okay. Response?

22 MR. GALBRAITH: Response? This one is a good example
23 of the same thing; but it is a little different, as well.
24 First of all, their answer to 49, for example, they said it
25 would depend on the circumstances.

1 In answer to 48 they said, "The amount should
2 cover the costs and expenses."

3 That seems to me like somebody who is thinking
4 about it, who's wrestling with it, but who understands. In
5 answer to 47, they said, "Temporary"; in other words, it
6 depends. An answer saying "temporary" means, "However long it
7 lasts is however long I could award it."

8 I think that's an answer that, in effect, is
9 depending upon the circumstances, which is exactly what we
10 require of jurors. After your explanations, they answered your
11 questions here today, indicating they could follow those
12 directions, abide by those rules, and serve.

13 I don't think they're disqualified for cause.

14 THE COURT: Number 20?

15 MR. BUZBEE: Withdrawing 20, your Honor.

16 THE COURT: All right. Then go to 21.

17 MR. BUZBEE: I'm going to withdraw that one, as well.

18 THE COURT: All right. Then I think the next one is
19 27.

20 MR. BUZBEE: Yes, sir. Your Honor, 27, again, on this
21 issue of punitive damages, this person states, "Should not be
22 any additions." I think that, at the least, we should ask that
23 question.

24 And, again, with all these, your Honor, just for
25 the record, I do think that there should be an individual

1 inquiry, no more than a couple of questions, so we can truly --
2 instead of guessing about whether these folks understood the
3 question -- we're arguing about what these people understood or
4 didn't understand.

5 And I'd also point out that after you -- you gave
6 the instruction about damages and what the law is and put your
7 personal feelings aside and your political persuasion -- with
8 all due respect, I think that these people -- at least we
9 should have two or three individualized questions from this
10 Court to ferret that out before the Court rules on these
11 objections.

12 THE COURT: All right. Number 31.

13 MR. BUZBEE: Yes, sir.

14 THE COURT: Oh, I'm sorry. Let me have your response
15 to Number 27.

16 MR. GALBRAITH: Okay. Did I have in my notes that
17 this is one you had stricken for some other reason perhaps? I
18 had in my notes that --

19 THE COURT: You sure do. That does show Number 27
20 was --

21 MR. BUZBEE: Gone.

22 THE COURT: -- one that I had said that I thought --
23 but I said I would permit you to make your objection.

24 MR. GALBRAITH: Okay. In other words, it was for this
25 reason; it wasn't for some other reason?

1 THE COURT: I don't recall now.

2 MR. GALBRAITH: I don't recall. I just have that in
3 my notes.

4 Twenty-seven is another one of those who answered
5 questions, "If it can be explained," "If it can be explained,"
6 "If it can be explained," "The amount should be equal to the
7 injury."

8 So, I'm thinking that these questions prior to
9 instructions, supplemented by your answers today after
10 instructions, Number 27 should not be stricken for cause.

11 THE COURT: All right. And it may be that 27 was on
12 the basis of some other reason but, as well, I believe the
13 stated basis, at least now on the record, in addition to any
14 other reason, would be the answers to the damage issues.

15 And the final one is 31.

16 MR. BUZBEE: I withdraw it.

17 THE COURT: Okay. All right. What we have remaining
18 are Numbers 3 and 4. And 3 is the surgery, and 4 is the --

19 MR. GALBRAITH: "I can't be fair to BP. I've already
20 made up my mind."

21 THE COURT: All right.

22 MR. GALBRAITH: Those are the two we're going to ask
23 questions of individually?

24 THE COURT: Well, I don't know that I want ask any
25 questions of 3 and 4 necessarily, but I do -- I mean, of

1 Number 4 necessarily but -- because I think that if he says it
2 he probably means it. And if there is some reason, we can
3 certainly bring him up --

4 MR. BUZBEE: Your Honor --

5 THE COURT: -- give us an explanation for --

6 MR. BUZBEE: -- can I be heard on 4?

7 THE COURT: Number 4 --

8 MR. BUZBEE: Yes, sir.

9 THE COURT: -- would be -- yeah. I said if you want
10 to bring him up we can bring him up, but I'm concerned about
11 that.

12 Here's what I am going to rule as relates to
13 these, if you would mark these, gentlemen. Then, if you have
14 some -- some basis for -- you've already stated your objection
15 and reasons.

16 If you believe that somehow some person should be
17 brought up for some reason, then you need to tell me that. But
18 not because I've ruled against you but because there's
19 something you think I have missed.

20 Because, certainly, I think that, as a general
21 premise, it's fairly difficult, if not impossible, to
22 rehabilitate a witness. And I don't want to make the mistake
23 of thinking that a person who writes something down don't mean
24 what they say. In fact, I think they're more deliberative when
25 they're sitting and thinking about what they're writing than

1 when they're simply answering the question, quote, off the
2 cuff.

3 And what I've done is I've read through each of
4 the requested strikes for cause the plaintiff and defendant
5 have stated; and I believe that there is some area of plausible
6 explanation for some of the answers, that doesn't disqualify.

7 These I believe are disqualified: 1, 4, 9, 11,
8 and 27. So, 1, 4, 9, 11, and 27.

9 Now, 3 is the surgery, I believe. And 4 is
10 the -- is a man who also said to one of the clerks on yesterday
11 that he didn't think he could judge this case, he didn't think
12 he could judge anyone, or something to that effect.

13 MR. BUZBEE: Which one was that, your Honor?

14 THE COURT: Number 4. That sort of prompted me to ask
15 this question. You notice at the end I said, "Is there any
16 religious or other reason why you would not be able to judge
17 this case?" And I was thinking that might draw him out and see
18 if that was something -- I'm not sure if he's changed his mind;
19 but I think in light of that comment to the clerk of court it
20 may be we need to ask him that question, whether or not there
21 was some conscientious objection or -- if he's just saying,
22 "Well, I don't think I'm educated enough," then that's one
23 thing. But if he's saying, "I have some critical thinking that
24 prevents me from doing this," then that would be the concern.

25 MR. GALBRAITH: Just so the --

1 THE COURT: There we are.

2 MR. GALBRAITH: Just so the record -- I mean, I think
3 we talked about some others that aren't on the record yet. For
4 example, Number 7 I think is one that you indicated was going
5 to be stricken for cause.

6 THE COURT: I'm not sure if I've listed that already
7 or not; but if I did not, I think, yeah.

8 MR. GALBRAITH: And Number --

9 MR. O'ROURKE: That was 8.

10 THE COURT: No. Seven is --

11 MR. GALBRAITH: The three strikes.

12 THE COURT: -- is the third -- and 8 is the lady who
13 has the child.

14 MR. GALBRAITH: No. Eight doesn't have the child.

15 But 8 is the one who works at The Frog and her boss isn't going
16 to pay her and she was crying.

17 THE COURT: Okay.

18 MR. BUZBEE: That's the one I -- I objected to 7.

19 THE COURT: You objected to 7. Okay.

20 MR. BUZBEE: And I think that we --

21 THE COURT: I have not -- then I have not ruled on 7
22 yet.

23 MR. BUZBEE: Right. That's right.

24 MR. GALBRAITH: I thought you had indicated 7 was
25 gone.

1 THE COURT: No. I think I did -- I think I initially
2 discussed that with you and I said that I, you know, might
3 agree with you on that; but I know that you opposed it --

4 MR. BUZBEE: Right.

5 THE COURT: The plaintiff opposed it, and I think he
6 opposed 3, 4, and 7; and I wrote that down and that's --

7 MR. BUZBEE: Correct.

8 THE COURT: So, Number 7 is one.

9 Who else is there, Mr. Galbraith, that you think
10 we might have missed that you think should have been or that I
11 might have already --

12 MR. GALBRAITH: Can I just read the ones that I think
13 you've indicated are stricken?

14 THE COURT: I tell you what. Why don't you just let
15 me go from my list?

16 MR. GALBRAITH: Okay.

17 THE COURT: And then --

18 MR. GALBRAITH: We'll do it again.

19 THE COURT: Yeah.

20 MR. GALBRAITH: Good.

21 THE COURT: Diane, do you have my list of what I've
22 already had you to strike?

23 THE CASE MANAGER: Yes.

24 THE COURT: Okay. Let's go from -- let's go from this
25 list and -- okay. So, get you a clean piece of paper. These

1 are the people who are still on the panel: 2, 3 -- and I still
2 have 4 on there. I'm going to call 4 still on there.

3 MR. BUZBEE: All right.

4 MR. GALBRAITH: You're going to call 4 still on there?

5 THE COURT: Yes.

6 MR. BUZBEE: Yes.

7 THE COURT: Four is the gentlemen that we're going to
8 ask -- I'm sorry. I take that back. I'm sorry. I granted a
9 strike on 4 --

10 MR. GALBRAITH: Right.

11 THE COURT: -- based on your motion.

12 MR. GALBRAITH: Yes.

13 THE COURT: Did I get that in error?

14 MR. BUZBEE: No. That's error, yes, sir, that's --

15 THE COURT: That's in error?

16 MR. BUZBEE: Yes, sir, that's in error.

17 THE COURT: Okay. Okay.

18 MR. BUZBEE: I don't oppose 4. I want him on the
19 panel. And I'll just say one other thing about him. I didn't
20 know he was a juror, but I rode up in the elevator with him.
21 And he made a comment to someone else, says, "I'm going to get
22 off this panel, somehow get off the panel."

23 So, just for full clarity, comprehension, I know
24 he made a statement to some of the court personnel; but that's
25 the statement I heard him make. So, it seems to me he's just

12:58 1 trying to get off the panel, period.

2 THE COURT: Well, I'll find out if that's real or not.
3 Let's go -- let's start again. Two, 3, 4, 5, 6, and I'm still
4 showing 7, 10, 12, 13, 14, 15, 17, 20, 21, 22, 23, 24, 26, 28,
12:59 5 29, 30, 31, 32, 34 and 35. We show those still on the panel.

6 Now, if you look at your list and tell me what
7 you think, if any -- I know Number 7 is a defendant's concern,
8 and Number 4 and Number 3. I know those are the three concerns
9 that the defense has.

01:00 10 MR. GALBRAITH: Our issues, your Honor, are with 3, 4,
11 and 7.

12 THE COURT: I got those.

13 MR. GALBRAITH: And I don't have any others.

14 THE COURT: Okay. Now, beyond the ones that I might
01:00 15 have overruled inferentially --

16 MR. BUZBEE: Right.

17 THE COURT: -- tell me what else you think is --

18 MR. BUZBEE: That's it.

19 THE COURT: Okay. So, we need to deal with 3, 4 and
01:00 20 7.

21 MR. GALBRAITH: Your Honor?

22 THE COURT: Yes, sir.

23 MR. GALBRAITH: Could I -- could I raise Number 9
24 because --

01:00 25 THE COURT: I struck Number 9, and you made your

01:00 1 objection to it already.

2 MR. GALBRAITH: Okay. Thank you.

3 THE COURT: All right. Anything else that we have not

4 addressed?

01:00 5 All right, gentlemen. Let's do this. Our panel

6 will be back --

7 MR. BUZBEE: Right now.

8 THE COURT: -- right now. And, so, when they are

9 ready, let's bring them in; and we'll deal with -- I tell you

01:00 10 what we need to do.

11 We'll bring them over to the sidebar on this

12 side. We'll bring Numbers 3, 4, and 7 to the sidebar.

13 MR. BUZBEE: Okay.

14 THE COURT: Okay?

01:04 15 (*Jury present*)

16 THE COURT: All right, gentlemen. If you would be

17 seated, please. Let's see.

18 Is your neighbor where he or she ought to be?

19 THE JURORS: (In unison.) Yes.

01:04 20 THE COURT: Who is it that doesn't have a neighbor?

21 So, we have all 35?

22 All right. How was the weather out there?

23 A JUROR: (In Unison.) Wet.

24 THE COURT: Wet? Still wet?

01:04 25 A JUROR: It's trying to stop.

01:04 1 THE COURT: It's trying to stop. I think this is a
2 big event this weekend. Don't you have the Dickens on the
3 Strand?

4 We got to make sure we get some special weather
01:05 5 here for that; otherwise, it's going to be tough.

6 Okay. We need to talk on the sidebar with three
7 of you; but before we do that, I need to make sure none of you
8 need to talk to me about some matter that you would like to
9 discuss privately.

01:05 10 Is there anything that you need to bring to my
11 attention privately?

12 I'm not suggesting anything. I'm just asking.
13 I'm just asking.

14 All right. Number 3 -- yes, Number 3, please.

01:05 15 Counsel, if you would join me here.

16 Number 3, if you would come up, please, ma'am.

17 *(Discussion off the record)*

18 *(At the bench with all counsel and juror)*

19 THE COURT: Good evening. How you doing?

01:06 20 A JUROR: Good afternoon, your Honor.

21 THE COURT: Well, it is afternoon. Not quite evening,
22 is it?

23 A JUROR: Yeah.

24 THE COURT: You mentioned, I believe -- did you
01:06 25 mention you had surgery scheduled?

01:06 1 A JUROR: I have surgery scheduled for Friday.

2 THE COURT: Okay. Somebody said that there's -- the
3 only minor surgery is surgery that somebody else is going
4 through and not you.

01:06 5 So, what do you say?

6 A JUROR: Well, I can't -- I've tried already calling
7 to reschedule it. And they're going to put me off through
8 February, and I really don't want to do that.

9 THE COURT: Okay. So, it's sufficiently important
01:06 10 that you need to get it done.

11 A JUROR: Yes.

12 THE COURT: And, number two, it's going to be
13 difficult to get it done any time if you miss this appointment.

14 A JUROR: Right.

01:06 15 THE COURT: All right. Thank you very much. Go ahead
16 and have your seat, please.

17 *(At the bench with all counsel)*

18 THE COURT: Okay. As relates to 3, you can strike
19 that. She's hardship.

01:06 20 *(In open court)*

21 THE COURT: Number 4?

22 *(At the bench with all counsel and a juror)*

23 THE COURT: How you doing this afternoon?

24 A JUROR: Great. How are you, sir?

01:07 25 THE COURT: Pretty good. You mentioned on yesterday,

01:07 1 when questionnaires were being done, that you had some concern
2 about your ability to serve as a juror.

3 A JUROR: Yeah.

4 THE COURT: Can you tell us what that's about?

01:07 5 A JUROR: Well, the more I heard you talk today about
6 being biased and if I could be fair and un-judgmental, I
7 can't --

8 THE COURT: No. You got to be judgmental. That's
9 what you're here to do. But not biased.

01:07 10 A JUROR: Biased, I mean. I don't want to be, but I
11 am biased. I hate chemical plants. I hate riding by BP. It
12 stinks. I mean, I work with chemicals, finishes, and cleaning
13 materials. And I avoid it much as possible.

14 THE COURT: What do you do, by the way?

01:07 15 A JUROR: Housekeeping.

16 You know, I believe in the system and all; but I
17 just -- you know, as far as being biased --

18 THE COURT: You're not just trying to get off this
19 jury panel, are you?

01:08 20 A JUROR: Yeah, but I'm also being honest.

21 THE COURT: Okay. That's what I mean. If you're
22 being honest, that's one thing. But if you just have something
23 to do, like take the kids to the zoo, that's something
24 different.

01:08 25 A JUROR: No, no. I mean, outside of that trip the

01:08

1 28th, the end of the month.

2 Could I ask you one question?

3 THE COURT: Sure.

4 A JUROR: Would we get out of here daily like maybe

01:08

5 3:30 or how does that work?

6 THE COURT: Probably be working a little bit later
7 than 3:30. You got kids to pick up?

8 A JUROR: Yeah, school.

9 THE COURT: All right. Thank you, sir.

01:08

10 *(At the bench with all counsel)*

11 THE COURT: I think he said it, he meant it. He's
12 off.

13 MR. GALBRAITH: So, he's stricken?

14 THE COURT: Yes.

01:08

15 *(In open court)*

16 THE COURT: Number 7.

17 *(At the bench with all counsel and a juror)*

18 THE COURT: How you doing this afternoon?

19 A JUROR: Good.

01:09

20 THE COURT: You had mentioned as part of your
21 questioning -- as part of your questionnaire that you -- and
22 maybe standing here you also mentioned the fact that you're a
23 physical therapist and that you have problems with your back.

24 A JUROR: Yes.

01:09

25 THE COURT: What's the longest period of time that you

01:09 1 sit? I mean, today it's been a little while but --

2 A JUROR: Uh-huh. It's kind of hard to say, because
3 in my job I rarely sit. I would say no later than an hour.
4 Because what happens is I start getting radicular symptoms down
01:09 5 my leg. Like, today I have reduced sensation because of that.

6 THE COURT: Okay.

7 A JUROR: But now it's better because I've been
8 walking around, I've been moving around, and I've been
9 stretching it out, which is the whole reason why I'm seeing a
01:09 10 chiropractor.

11 THE COURT: Do you take medication for this back?

12 A JUROR: No.

13 THE COURT: It's just physical therapy and exercise.

14 A JUROR: Right. And just me -- I need to move around
01:10 15 every hour.

16 THE COURT: Yeah, that's what I mean. When I say
17 "exercise," I mean you need to get up and walk and move the
18 back around a little bit.

19 A JUROR: Yes.

01:10 20 THE COURT: So, the most that you can generally sit as
21 a -- if you were sitting as a juror or even at work would be
22 about an hour at a time and you would need to get up and move
23 around?

24 A JUROR: Correct.

01:10 25 THE COURT: Okay. Do you have any questions?

01:10

1

MR. GALBRAITH: Yes. May I question her?

2

THE COURT: Yes. Depends on what you're going to ask.

3

Go ahead.

4

MR. GALBRAITH: Okay. Subject to the Court's

01:10

5

approval.

6

THE COURT: Sure.

7

MR. GALBRAITH: You had indicated two other concerns

8

that you had, and I just wanted to ask about them. What is the

9

situation -- you're -- as I understand it, you told us you're a

01:10

10

single parent.

11

A JUROR: Yes.

12

MR. GALBRAITH: You have a child --

13

A JUROR: Yes.

14

MR. GALBRAITH: -- who is under the age of 10?

01:10

15

A JUROR: Yes.

16

MR. GALBRAITH: And you don't have family in the area,

17

and you're the sole support?

18

A JUROR: Right.

19

MR. GALBRAITH: And that there -- so, you don't have

01:10

20

capacity to make alternate arrangements for child care?

21

A JUROR: I could, but I don't know -- it's not -- I

22

mean, I have friends that could help; but it's not definite. I

23

would have to rely on my friends. I'm going to give an

24

example.

01:11

25

Last month my son was in school. He was at

01:11 1 recess and he fell and he split his eyebrow. And they called
2 me at work and it was -- it was fine because I was able to
3 leave, and I had to take him to the ER.

4 Now, if there were a situation like that here, I
01:11 5 would have to rely on friends.

6 MR. GALBRAITH: Do you have good resources for that or
7 not?

8 THE COURT: Well --

9 A JUROR: It's un -- questionable. I don't know.

01:11 10 Like --

11 THE COURT: -- when you say "resources," you're
12 talking about whether she has somebody who can for cover her,
13 that kind of thing?

14 MR. GALBRAITH: Yes.

01:11 15 THE COURT: Okay. Go ahead.

16 A JUROR: Like, I have a friend, a very close friend;
17 but she's a nurse. So, what -- God forbid something happened.
18 And if they called her, I don't know if she would be able to
19 leave work, because she's a nurse. Same situation with a
01:11 20 neighbor. She's an occupational therapist, and I don't know if
21 she would be able to do that.

22 MR. GALBRAITH: Okay.

23 THE COURT: You have a question, any question?

24 MR. BUZBEE: How old is your child?

01:12 25 A JUROR: He's 8.

01:12 1 MR. BUZBEE: He goes to school full time during the
2 days?

3 A JUROR: Yes. Yes, sir.

4 MR. BUZBEE: You're saying that your biggest concern,
01:12 5 though, is really if there was an emergency at school?

6 A JUROR: Correct.

7 MR. BUZBEE: That's the real issue, like all of us
8 parents would have, basically.

9 A JUROR: Right.

01:12 10 MR. BUZBEE: Okay.

11 THE COURT: Your son doesn't have any particular
12 physical attributes that would cause him to be more accidental
13 than normal --

14 A JUROR: No.

01:12 15 THE COURT: -- than a regular guy, regular boy?

16 A JUROR: No.

17 THE COURT: Okay. Sometimes that's the case.

18 MR. GALBRAITH: There was a third area if I might,
19 your Honor?

01:12 20 THE COURT: Okay. Sure.

21 MR. GALBRAITH: In an answer to the questionnaire, you
22 indicated that based on what you had seen and heard before this
23 trial, before today, that you had come to have a strong
24 personal belief that had already caused you to believe that you
01:12 25 could not be fair to BP in this present legal dispute and you

01:12 1 had said, "yes," correct?

2 A JUROR: Oh, okay. Okay. Can you read the question

3 again?

4 MR. GALBRAITH: Sure. Can I show it to --

01:13 5 THE COURT: Show it to her.

6 MR. GALBRAITH: It's your questionnaire --

7 THE COURT: Just let her read it.

8 MR. GALBRAITH: -- Number 46 --

9 THE COURT: Hold on a minute. Is that her answer?

01:13 10 Okay. That will be her questionnaire.

11 A JUROR: Okay. "Is there anything about what you

12 have read, heard, and learned from other -- regarding the

13 accident -- at the BP or do you have a strong personal belief

14 that has already caused you to believe" -- oh, I'm sorry. I

01:13 15 probably was fatigued at the end. It was a lot of questions,

16 and it was -- I was tired. But, no, I don't --

17 THE COURT: Checked the wrong box?

18 A JUROR: I would be fair. I would be fair.

19 MR. GALBRAITH: Okay. Thank you.

01:13 20 A JUROR: Sorry about that.

21 MR. GALBRAITH: That's all right.

22 THE COURT: Okay. Thank you very much. You may have

23 a seat.

24 *(At the bench with all counsel)*

01:13 25 MR. GALBRAITH: We would move to strike her, your

01:13 1 Honor, for the three reasons stated.

2 THE COURT: And you oppose?

3 I'm not going to strike her.

4 MR. BUZBEE: I have four kids in school, too.

01:13 5 THE COURT: I'm not going to strike her. I think
6 that -- I have a back problem, and many people may have limited
7 back problems. But we can work with her back problem.

8 There is an automatic -- not an automatic, but a
9 disqualification -- or one she can claim where her child is
01:14 10 under a certain age. She did not make that claim and so -- and
11 I've forgotten what that age is. But that would generally get
12 her off the panel, from that perspective, if she'd make the
13 claim. When you're working and you're not taking care of the
14 child full time, I believe you waive it.

01:14 15 *(In open court)*

16 THE COURT: Number 19.

17 *(At the bench with all counsel)*

18 MR. GALBRAITH: He's already stricken.

19 MR. BUZBEE: He's stricken.

01:14 20 THE COURT: I know. But he raised his hand. If I
21 don't bring him up, he'll think I ignored him and he'll throw
22 his hand up again.

23 *(At the bench with all counsel and a juror)*

24 THE COURT: How are you doing this evening or -- this
01:14 25 afternoon. I keep saying "evening." Seems like it's evening.

01:14 1 It's afternoon.

2 How you doing?

3 A JUROR: Fine.

4 THE COURT: You have some surgical -- not surgical but
01:15 5 some procedures that you're getting ready to have done.

6 A JUROR: (Indicating).

7 THE COURT: I don't need to see your paperwork.

8 Is that the reason you wanted to come up?

9 A JUROR: Yes, sir. I'm going to have an MRI as well
01:15 10 as scans of my carotids for numbness in my face and headaches
11 and those things there. So --

12 THE COURT: All right. Well, thank you very much.

13 Anything else, gentlemen?

14 MR. GALBRAITH: No, your Honor.

01:15 15 MR. BUZBEE: (Shaking head).

16 THE COURT: Okay.

17 *(At the bench with all counsel)*

18 THE COURT: Would you verify your -- Diane, would you
19 step over, please? I'm sorry.

01:15 20 Strike through 3 and 4. Did you get those two?

21 THE CASE MANAGER: Yes, sir.

22 THE COURT: Seven is staying on the panel, and that's
23 it. And I think we already have 19. Verify that.

24 THE CASE MANAGER: Yes, I --

01:15 25 THE COURT: Okay. Good.

01:15

1

Gentlemen?

2

MR. GALBRAITH: Could we reread on the record your
final rulings so we can know --

4

THE COURT: Final rulings or final names?

01:15

5

MR. GALBRAITH: Yes.

6

THE COURT: I can't go back and remember all my
rulings.

8

MR. GALBRAITH: Yes.

9

THE COURT: Okay. Let's do that, then.

01:16

10

11

12

Remaining on the panel are 2, 5, 6, 7, 10, 12,
13, 14, 15, 17, 20, 21, 22, 23 and 24, 26, 28, 29, 30, 31 and
32. That constitutes the panel.

13

You have three strikes each.

14

MR. GALBRAITH: Okay.

01:16

15

16

17

THE COURT: One, two, three -- hold on just a minute.
Three, six, seven, nine, ten, eleven, twelve -- okay. We got
more than enough.

18

So, how many do you want to seat?

19

MR. BUZBEE: Eight, at most.

01:17

20

21

MR. GALBRAITH: I think if we got ten we should seat
10, and I think we should. I think we will.

22

23

24

THE COURT: We got more than 10. I mean, when you say
if we got ten, we got more than ten remaining on the panel.
Right now, we have a total of 17 potential jurors without --
I'm sorry.

01:17

25

01:17 1 MR. GALBRAITH: After strikes, in other words.

2 THE COURT: No. That's -- yeah, 17 -- well, that's
3 not right. There are 12 strikes.

4 MR. GALBRAITH: No. There's six strikes. Three a
01:17 5 side, right?

6 MR. BUZBEE: Twenty-three.

7 THE COURT: Be 23 remaining. That's what we have, 23
8 remaining. If we seat eight -- plus six is 14 -- that's still
9 within range. If we seat 10, it's within range.

01:18 10 Any additional strikes needed? Three and three?

11 MR. BUZBEE: Three and three.

12 THE COURT: And we're going to seat -- I think -- I
13 don't want to seat too many people, but I think if we seat
14 eight we've got a good panel. I'm concerned about the weather.
01:18 15 That's the main thing. Or somebody getting sick.

16 Very well. Three and three, and let's seat
17 eight.

18 MR. BUZBEE: Yes, sir.

19 MR. GALBRAITH: Will we have maybe a 20 minute break
01:18 20 to kick this around?

21 THE COURT: I'm going to let you do that now.

22 MR. GALBRAITH: Yes.

23 THE COURT: Did you want to do it in the courtroom or
24 did you want to step out?

01:18 25 MR. GALBRAITH: I would like to step out.

01:18 1 THE COURT: Okay. There's a jury room -- I'm sorry.
2 There's a --
3 MR. GALBRAITH: Clerk's room.
4 THE COURT: -- room at the back --
01:18 5 MR. GALBRAITH: Yeah. Okay.
6 THE COURT: -- right here, and there's also the law
7 clerk's chambers over there. So, you-all choose what --
8 MR. BUZBEE: We'll take the chambers. That's where my
9 sandwich is.
01:18 10 THE COURT: Okay. We'll call for you.
11 *(Recess was taken from 1:18 to 1:42 p.m.)*
12 *(Jury panel present)*
13 THE COURT: Ladies and gentlemen, the strikes have
14 been completed. We have a panel. We'll ask you to come
01:42 15 forward.
16 And if the first four of you would -- the first
17 four names come forward in the order which you're called. The
18 first four of you should take the front row and the second four
19 the back row, and we'll give you instructions if you get turned
01:42 20 around there.
21 THE CASE MANAGER: Do you want them to start here?
22 THE COURT: Yes.
23 THE CASE MANAGER: Okay.
24 Number 1, H [REDACTED], S [REDACTED]; Number 2 D [REDACTED];
01:43 25 Number 3, S [REDACTED]. It's I [REDACTED] S [REDACTED].

01:43

1 A JUROR: Number 7?

2 THE CASE MANAGER: Yes. This is your new number,
3 actually.

4 A JUROR: This way?

01:43

5 THE CASE MANAGER: No. This way.

6 A JUROR: Excuse me. I'm stepping on your feet.

7 All the way?

8 THE CASE MANAGER: Yes.

9 H [REDACTED]; D [REDACTED]; Number 4 is Number 10, K [REDACTED];

01:43

10 Number 5 is A [REDACTED], who was 14; Number 6 is R [REDACTED], who was
11 17; Number 7 is 21, L [REDACTED]; and Number 8, M [REDACTED], who was 22.

12 THE COURT: All right. Gentlemen, any objections
13 other than what you might have already stated on the record or
14 what you might have stated in your papers?

01:44

15 And by that I mean looking at the strike list if
16 you need to, that you prepared and presented to me, have we
17 made a mistake, first?

18 MR. BUZBEE: Not from our side, your Honor.

19 THE COURT: All right.

01:44

20 MR. GALBRAITH: None from our side, your Honor.

21 THE COURT: All right. Any motions regarding any
22 panel members at this time or the panel itself that you have?

23 MR. BUZBEE: Not from the plaintiffs.

24 MR. GALBRAITH: None, your Honor.

01:45

25 THE COURT: Thank you very much.

01:45 1 Ladies and gentlemen -- I'm sorry. All right.
2 No men in the house. Ladies, would you please stand and raise
3 your right hand at this time?

4 THE CASE MANAGER: Do each of you solemnly swear that
01:45 5 in the case of Garner versus BP Amoco you will a true verdict
6 render according to the law as it may be given to you in charge
7 by the Court and to the evidence submitted to you under the
8 rulings of the Court, so help you God?

9 THE JURORS: (In unison.) I do.

01:45 10 THE CASE MANAGER: Thank you.

11 THE COURT: Thank you very much. Please be seated.

12 Ladies and gentlemen, you have tolerated me well,
13 didn't throw any eggs or rocks or anything of that nature; so,
14 apparently I didn't do too badly.

01:45 15 Let me just say in behalf of the federal
16 judiciary that we appreciate your presence. We know that your
17 time is valuable. We know that you have what you claim to be
18 important things to do, and I know they are important.

19 But we don't want to drift too far from the
01:46 20 anchor and forget what really anchors us all in this process,
21 the reason we can go to work every day and the reason we can do
22 the things we do. We sometimes need to pause just to remember
23 that and remember just how important it is that we look out for
24 each other. And looking out for each other sometimes means
01:46 25 we're serving on jury panels.

01:46 1 Have a good day. Thank you very much. I'll see
2 you next week.

3 All right. We're going to take a break. I'm
4 going to admonish the panel a little bit, and then we're going
01:47 5 to have to take a break.

6 I don't know if you-all got a snack or anything.
7 Some of you might have, but we did not. We were tied up. We
8 need 15 to 20 minutes to do that.

9 Let me give you some instruction.

01:47 10 Gentlemen, have a seat.

11 Let me just give you some general instructions,
12 and then we'll see if there are some other things. You know,
13 I've been in this business, I think I said, almost 30 years, 25
14 or so years. And I think, in the federal judiciary, this is
01:47 15 probably the second time -- only the second time that I've had
16 a panel constituted of all women. And that's not a reflection
17 on you or me. It's just something that happens occasionally.

18 And, so, let me just say that we appreciate your
19 service; and we expect that you will enjoy your work and
01:47 20 service with us. We're going to do everything we can to make
21 sure it's convenient. We don't want to sit too long in one
22 place; and we're going to do our best to be aware of and
23 responsive to any emergencies, if any, that you might have.

24 Now, I know that we're going to be in trial
01:48 25 almost every day; except there are a couple of days when we're

01:48 1 going to have either a half day off or a full day off. And let
2 me just inform you now that this Friday we will work until noon
3 and we'll break until the following Monday, I believe. And I
4 think we might start that Monday at noon.

01:48 5 Diane, do you have the real truth here?

6 All right. Here we go. We'll recess at noon on
7 December -- yeah, December 4. We're in December already.
8 Isn't that amazing?

9 On Monday of the following week, we'll begin at
01:48 10 1:30. So, you'll have a half day.

11 On the 14th, the following Monday, you will have
12 a full day. We will not be coming in on that day, and we'll
13 begin that Tuesday at 1:30. And the reason is this. There are
14 some commitments that I have made in another court, that I need
01:49 15 to fulfill in Houston. I have a docket up there, and I have
16 some things I need to do there. That's part of it.

17 And, so, blame me if you're going to blame
18 somebody for these delays. And on Wednesday, we -- if
19 necessary, we'll start at 1:30. So, we're talking the 4th,
01:49 20 7th, 14th, 15th, and 16th where we'll be working pretty much
21 half days.

22 Now, I'm of the opinion that we can complete this
23 case within that time frame and without difficulty. And, so,
24 we'll work together starting hopefully at 8:30.

01:49 25 Let me see. Do we have any long distance drivers

01:49

1 on the panel here?

2 A JUROR: What do you call "long distance"?

3 THE COURT: Takes more than 30 or 40 minutes to get
4 here?

01:49

5 A JUROR: Yeah.

6 THE COURT: How far are you driving, Number 5?

7 A JUROR: Pearland.

8 A JUROR: Oh, so, am I.

9 THE COURT: Okay. Is that 30 minutes? Is it an hour?

01:49

10 A JUROR: No. It's an hour.

11 THE COURT: How about, Number 2, you're from Pearland,
12 as well?

13 A JUROR: I'm from -- Number 2, from Pearland, too.

14 THE COURT: Okay.

01:50

15 What about 14?

16 A JUROR: Lake Jackson.

17 THE COURT: That's on the back; and that's a pretty
18 good distance, too. So, that's about 70 miles.

19 A JUROR: About 60 miles.

01:50

20 THE COURT: Yeah. Here's the deal. If you want to,
21 as they say, "put up" in Galveston, if you want to stay in
22 Galveston, we can make that arrangement for you, for a hotel,
23 someplace to stay. It's up to you. But you need to let me
24 know or let the case manager know so that -- if this distance
01:50 25 becomes a problem for you.

01:50 1 A JUROR: I'll take it day by day. If it gets rough,
2 I'll let you know.

3 THE COURT: Yeah, let us know that. Okay?

4 Yes, ma'am?

01:50 5 A JUROR: Will we get a copy of the schedule that you
6 just --

7 THE COURT: Yeah, we'll do that for you. Absolutely.

8 Yes, ma'am?

9 A JUROR: On the other days, what time should we be
01:50 10 here?

11 THE COURT: That's what I was saying, 8:30.

12 A JUROR: That's much better.

13 THE COURT: Typically, we'll start every morning at
14 8:30. And here's the logic. I would like to get three hours
01:50 15 of work in in the morning and three hours of work in in the
16 afternoon.

17 We start at 8:30. We take a break an hour and a
18 half later for 30 minutes. We do another hour and a half; and
19 we take a lunch break for an hour, I believe. We'll do an hour
01:51 20 and a half session in the evening, we'll take another 30 minute
21 break, and do another hour and a half session. That will put
22 us out of here about 5:00 o'clock.

23 Does that sound right? Sounds late?

24 A JUROR: Will I be able to get a notice so I can give
01:51 25 to my job today to --

01:51 1 THE COURT: Absolutely.

2 A JUROR: I have a caseload of patients that they need
3 to --

4 THE COURT: Absolutely. We can give you an indication
01:51 5 as to where you are if you need something for your employer.
6 In fact, if I need to write a letter, I'll do that, as well.

7 A JUROR: Okay. Good. Thank you.

8 THE COURT: Yes, ma'am?

9 A JUROR: I'll need to get something so I can try to
01:51 10 get someone to cover my evaluations that I have to do.

11 THE COURT: Absolutely. And, again, we can give you
12 something from the clerk's office. But if that's not strong
13 enough, I'll give you a personal letter. I've had to do that
14 in some instances and make sure employers appreciate and
01:51 15 understand that they can't be where they are if we can't be
16 here. It's just that simple.

17 Any questions or concerns about the schedule or
18 about your travel?

19 And this can wear on you, I know, coming back and
01:52 20 forth. That's a long way to drive, an hour and maybe 20
21 minutes each day. Depending on the traffic, it can wear you
22 out. And what we need most from you is your attention. And
23 that can get hard when you -- you know, when you -- about 1:30
24 particularly. That afternoon session is really difficult,
01:52 25 because that's after we've eaten.

01:52 1 Now, let me just give you some other thoughts. I
2 recommend that you bring your lunch or find a place where you
3 can eat responsibly. By "responsibly" I mean probably eating
4 less than what you would normally eat. Because when you're
01:52 5 sitting, food tends to, you know, have its effect on us for
6 sure. So, particularly at lunch, I would recommend that you
7 eat less than you probably would normally eat and do a little
8 snacking and maybe another snack at 2:30 or 3:00 o'clock,
9 whatever that time is.

01:53 10 I will not hold you here at night. I will make
11 sure that you have -- if you're driving in, that we have
12 security to walk you to your vehicles. And I believe most of
13 you are going to be parking probably in back. Let's call it
14 the back. It's behind the post office, so that we'll get you
01:53 15 safely to your vehicles and make sure that you're in good
16 shape.

17 Any other questions before I go further?

18 Yes, ma'am?

19 A JUROR: I looked at the weather this morning. They
01:53 20 were talking about flurries this Friday. So, I was wondering
21 if it would -- I know --

22 THE COURT: You talking about snow flurries?

23 A JUROR: Yes, snow flurries, this Thursday and
24 Friday.

01:53 25 THE COURT: Are you kidding?

01:53 1 A JUROR: No, I'm not kidding. I remember last year
2 when it got cold and we got ice on the bridge and all the
3 bridges were closed. Would we be notified if --

4 THE COURT: Let me ask you this. How many of you have
01:54 5 cell phones? Okay.

6 A JUROR: So, is what -- we'll --

7 THE COURT: We're connected.

8 A JUROR: Are you going to call us or is there a
9 number we can call?

01:54 10 THE COURT: Well, I think if you run into a situation
11 that's going to delay you or you cannot, then you need to call
12 the case manager or court deputy, who will give you a number
13 where you can reach them --

14 A JUROR: Okay.

01:54 15 THE COURT: -- you know, early in the morning or late
16 in the evening.

17 A JUROR: Okay.

18 THE COURT: Particularly early in the morning. And,
19 hopefully, we will not have that difficulty. But if, for any
01:54 20 reason, you're delayed, you just give them a call and let us
21 know where you are and how things are going.

22 I don't advise you moving to Galveston; but if
23 you need to get a hotel room, we need to do that, you know,
24 just to make sure that you have -- and generally what happens
01:54 25 is when people -- you know, when I try cases in Houston, we've

01:54 1 had people from out of town.

2 They get to court on time great as long as
3 they're driving. The minute they move in town, they sleep
4 late, come to court late. They can't get it going, for some
01:55 5 reason. So, hopefully -- if you have some challenges, please
6 let us know so we can make those arrangements for you and at
7 least cover you in that circumstance.

8 Now, I've said some things already about serving
9 as jurors. Certainly, bias, prejudice, and sympathy have no
01:55 10 role to play in this process. We listen to the testimony of
11 the witnesses; we make judgment calls about them in terms of
12 their credibility; and, of course, we compare notes -- you
13 compare notes.

14 By "notes" I don't mean you take notes. You
01:55 15 compare notes at the end of the case in terms of whether you
16 believe or did not believe someone. And, of course, in the
17 process of doing that, you come away with a verdict.

18 You decide the questions that are presented to
19 you. You decide those questions, but you're the judges of the
01:56 20 credibility and the believability of the witnesses and the
21 weight that you want to give to their testimony. You certainly
22 are not bound by the testimony of any one person.

23 During the course of this trial, you'll probably
24 hear persons testifying who say, "I'm an expert," or who are
01:56 25 presented to you as experts. That testimony is not any more

01:56 1 credible or believable than any other testimony, except they're
2 claiming to have expertise in a certain area.

3 And you can give that testimony the weight you
4 think it deserves, based on your experience, based on what
01:56 5 other witnesses have to say, and maybe even what other experts
6 have to say. So that simply having a title does not get you
7 anyplace with us, the jury and the judge.

8 I've often said this in other cases. If the
9 president comes in and decides he's going to take the witness
01:56 10 stand, he has to take an oath and his credibility or
11 believability is on the line just like anyone else. There is
12 no granting -- or any deference to any person, based on his or
13 her title.

14 And, certainly, in terms of the trial of the case
01:57 15 and the back and forth, I think I said if you might want to
16 bring your lunch or find that place but -- that you can get to
17 and get back quickly, I think we generally -- if you've been in
18 the jury room, you know that we have a coffee bar there. We
19 probably have some high cholesterol stuff, the kind of stuff
01:57 20 you don't want to have. But we'll do our best to accommodate
21 you. Just in case you missed that wholesome breakfast, you'll
22 have something in your stomach. And, of course, we'll take
23 breaks if we need to.

24 And if, during the course of the trial, you need
01:57 25 to take a short break or something is going on, feel free to

01:57 1 raise your hand and let me know; and we'll take a short break
2 and look out for you in that respect.

3 I've already explained to you the procedure that
4 will be followed; that is, opening statements, going into the
01:58 5 evidence, and all the way to the end, closing statements. Now,
6 if, for example, a person shows up in court here, that claims
7 to be a plaintiff or a witness, that you know -- and, of
8 course, there's no way sometimes to know that you know someone
9 until you see them again. If that happens, I would like you to
01:58 10 bring that to our attention so that we can talk to you about
11 that. You're not in trouble; we just need to make sure that we
12 can cover -- or understand what that relationship is so that
13 there is no breakdown in the trial process.

14 Well, that's pretty close to what I need to say.
01:58 15 Let me ask counsel for the plaintiff, do you have any --
16 anything that you need to bring to the Court's attention --

17 MR. BUZBEE: No, sir.

18 THE COURT: -- before we take a break?

19 Mr. Galbraith?

01:58 20 MR. GALBRAITH: No, your Honor.

21 THE COURT: All right. We're going to take another
22 exercise, another walking exercise, get some stretching in.
23 It's 2:00 o'clock, I believe, by that clock on the wall. I'm
24 not reading that right. It's 2:00 o'clock. We're going to
01:59 25 take probably 30 minutes. Take about 30 minutes to get a snack

01:59 1 and be ready to start at 2:30.

2 Let me ask how many of you -- do any of you have
3 childcare concerns now that you won't have tomorrow? In other
4 words, do you have to pick a child up before 5:00 o'clock?

01:59 5 A JUROR: I need to call someone to pick my three
6 children up by 3:00 o'clock.

7 THE COURT: Okay. Let's do that. And we should be
8 out of here after the opening statements this afternoon. We'll
9 start the evidence first thing tomorrow morning. So, that
01:59 10 means when you come back we'll take opening statements of the
11 attorneys. Well, we might be able to get some evidence in; but
12 we'll work until 4:30 or 5:00. Okay?

13 All right. So, let's take you where you'll be
14 reporting to each morning. We'll get you there, and that's
01:59 15 where you will congregate each morning. And when you take a
16 break, feel free to utilize that space. Feel free to use that
17 space for lunch.

18 I don't know. Do we have a refrigerator in
19 there, Diane?

02:00 20 THE CASE MANAGER: I don't remember seeing a
21 refrigerator.

22 THE COURT: Yeah. We'll see what we can get, if we
23 need a microwave in there -- we'll see if we can get some stuff
24 in there so that you don't have to run around the building
02:00 25 looking for these kinds of things.

02:00 1 And that's where we'll get you from when it's
2 time. Okay?

3 Take about 30 minutes.

4 THE CASE MANAGER: All rise.

5 *(Recess was taken from 2:00 to 2:40 p.m.)*

6 *(Jury not present)*

7 THE COURT: Please be seated. The panel will be down
8 shortly.

9 MR. GALBRAITH: There's a housekeeping issue. A
02:40 10 number of subpoenas have been served and -- on BP employees and
11 retirees, and they all asked for the employees to show up at
12 8:30 this morning. And some have been served today, we think.
13 We don't have a complete list. We don't know who all is the
14 subject of that.

02:40 15 But it doesn't seem right that they should have
16 to sit around here from 8:30 this morning.

17 THE COURT: No, I don't no seem to have a problem with
18 that. I think what we need -- I hope counsel will agree -- is
19 that he can indicate to you this afternoon when -- which, if
02:40 20 any, of those he needs. And then I can swear in the rest of
21 the witnesses, and they can return -- and the two of you work
22 out the logistics of that, making sure that the witnesses
23 understand that they're not to take long trips or go places
24 that may make it difficult for us to have them present.

02:41 25 MR. BUZBEE: Yes, sir.

0 2 : 4 1 1 Your Honor, two things with that -- and
2 especially the retiree out there in the hallway. I told him
3 earlier, "Man, I'm going to try to raise this with the judge."
4 He can be sworn in. I would like to invoke Rule 615, swear him
0 2 : 4 1 5 in, invoke the rule, and we'll let him go. And I'm going to
6 work with counsel on that.

7 THE COURT: Is he the only one here right now?

8 MR. BUZBEE: No. There's Mr. McLemore, the former
9 fire chief; there's Joe Trapp; and I also served the plant
0 2 : 4 1 10 manager, Keith Casey, who didn't show up for some reason.

11 THE COURT: Okay. Well, let's get them all in. Who
12 are you going to need this evening?

13 MR. BUZBEE: Neither of those two this evening. So,
14 if we can have Mr. Trapp come forward and Chief McLemore.

0 2 : 4 1 15 THE COURT: Well, let's bring them in. And we'll do
16 that before we bring the panel in.

17 MR. BUZBEE: And with regard to invoking Rule 615, I
18 raise that simply because I see that BP has two corporate reps
19 and I think you're only supposed to have one. So, that's
0 2 : 4 2 20 concerning to me.

21 THE COURT: You are entitled to one.

22 MR. GALBRAITH: In other words, I must designate one?

23 THE COURT: Yes.

24 MR. GALBRAITH: Is it possible, because of the
0 2 : 4 2 25 exigencies of BP, that I can --

0 2 : 4 2 1 THE COURT: Where did the other gentleman go?

2 Just hold it right there.

3 Was it just two?

4 MR. BUZBEE: Yes, just two. The other one didn't show
0 2 : 4 2 5 up.

6 THE COURT: Oh, okay.

7 Okay. Let's take this up. Go ahead. Go ahead.

8 MR. GALBRAITH: What I would like to reflect to the
9 jury is that one or the other will be here serving as a
0 2 : 4 2 10 corporate rep. I'm not sure that -- it doesn't seem fair to me
11 that they both have to give up their day jobs full time for an
12 extended period of time.

13 I would like to suggest to the jury, if it's
14 okay, that this is something we take seriously and one or the
0 2 : 4 2 15 other one will be here at all times.

16 THE COURT: I don't have any problem with alternating,
17 if that's -- unless there's something that I'm not aware of --

18 MR. BUZBEE: I'm not sure.

19 THE COURT: -- alternating who the representative
0 2 : 4 2 20 might be.

21 Now, here's a question. Is either of them going
22 to be testifying in this case?

23 MR. GALBRAITH: Mayhaps.

24 THE COURT: Well, I think if you're going to have them
0 2 : 4 3 25 alternating, that's going to be a problem unless you designate

0 2 : 4 3 1 one as a testifying witness. Because the point is that
2 somebody might -- one of them would be here one day, let's say,
3 and one a different day. And if you designate them both as
4 testifying, then for sure they cannot alternate.

0 2 : 4 3 5 MR. GALBRAITH: Then I will make that decision and
6 designate by tomorrow morning, if that's okay.

7 THE COURT: Certainly. I don't think that's a
8 problem.

9 Gentlemen, you've been subpoenaed as witnesses.
0 2 : 4 3 10 Would you raise your right hand at this time?

11 And tell me your name for the record, sir.

12 MR. TRAPP: Joseph Trapp.

13 THE COURT: Joseph --

14 MR. TRAPP: Trapp.

0 2 : 4 3 15 THE COURT: T-R-A-P-P?

16 MR. TRAPP: That's correct.

17 THE COURT: And yours?

18 MR. McLEMORE: John McLemore.

19 THE COURT: Do you solemnly swear or affirm that any
0 2 : 4 3 20 testimony you'll give in this case will be the truth, the whole
21 truth, and nothing but the truth, so help you God?

22 MR. TRAPP: I do.

23 MR. McLEMORE: I do.

24 THE COURT: All right. Gentlemen, the rule has been
0 2 : 4 3 25 invoked, which means that you are not to talk to anyone about

0 2 : 4 3 1 the testimony that they have given; that is, you shouldn't
2 consult with others who have already given their testimony.

3 You shouldn't let people talk about their
4 testimony in your presence, and the lawyers understand fully
0 2 : 4 4 5 that they cannot coach you in the sense of telling you what
6 someone else has testified to as a way of influencing your
7 testimony.

8 Once you've given your testimony, you still
9 cannot talk about that testimony except with the lawyers unless
0 2 : 4 4 10 you are excused from the rule. And in that instance, being
11 excused means that you're free to talk with anybody you choose,
12 as long as you're not talking to somebody else who is going to
13 testify in the case. Because they're bound by the rule; and
14 you should not, directly or indirectly, violate the rule.

0 2 : 4 4 15 Understood?

16 MR. TRAPP: Yes, sir.

17 THE COURT: Thank you, gentlemen. Your attorney,
18 Mr. Galbraith, will be in touch with you as you're needed. So,
19 make sure that if you've got any plans or thoughts of leaving
0 2 : 4 4 20 the area that you let him know before so that he can coach you
21 as to when your testimony might be needed. All right?

22 MR. TRAPP: Okay.

23 THE COURT: Okay. Thank you. You may be excused.

24 MR. GALBRAITH: Can they stay around for the opening
0 2 : 4 5 25 statements?

02:45 1 THE COURT: No, not the opening statements either.

2 Let's see. Do we have any other witnesses in the
3 courtroom, other than the plaintiffs?

4 Okay. Good deal.

02:45 5 MR. VICK: Your Honor, we do have one other issue.

6 One of our doctors, Dr. Kerry Laursen, who we would like to
7 call to testify, is not going to be available until next
8 Thursday or Friday because she had some travel plans, other
9 things going on. So, we would just like to be able to take her
10 out of turn if that's not a problem.

11 THE COURT: I don't seem to have a problem with any
12 witnesses being taken out of turn. The evidence is the
13 evidence. So, if that -- if you would simply make sure that
14 opposing counsel understands the order of witnesses that you're
15 planning to call, that's not a problem.

16 Now, if you're expecting that by that time you
17 will be done with your case and that the defense will be
18 calling witnesses, that might be a different problem, a
19 different concern. So, do you think you'll be done before you
20 get to her?

21 MR. VICK: Yeah, and that is my concern. I'm afraid
22 that we will have finished putting on all the rest of our
23 evidence before then.

24 THE COURT: Okay. Concern about the witness
02:46 25 unavailability, taking it late?

0 2 : 4 6 1 MR. GALBRAITH: I'm confident we can put them in
2 where -- you know, at a convenient time, in the middle of
3 somebody's case won't affect us at all. I mean, we won't have
4 an objection on out of order.

0 2 : 4 6 5 THE COURT: I can instruct the jury accordingly.

6 MR. BUZBEE: I'm wondering if we could take her depo
7 in the evening hours and just play it. Would you be willing to
8 do that?

9 MR. VICK: I'll tell you, the only issue with that is
0 2 : 4 6 10 she's leaving town late tonight, early tomorrow morning.

11 MR. BUZBEE: We'll work it out.

12 THE COURT: It's been worked out as far as the Court
13 is concerned. If you-all work out something different, that's
14 up to you.

0 2 : 4 6 15 MR. BUZBEE: Thank you, your Honor.

16 MR. VICK: Thank you, your Honor.

17 *(Jury present)*

18 THE COURT: All right. Please be seated.

19 Ladies and gentlemen -- let me ask, did you get
0 2 : 4 7 20 your phone call in?

21 A JUROR: Yes.

22 THE COURT: I think we're good to go. And what I will
23 do now is take -- or permit the lawyers to make their opening
24 statements.

0 2 : 4 7 25 They have indicated to me what they believe to be

0 2 : 4 7 1 an appropriate time; and I will watch the clock to make sure
2 that they are in conformity, as best as I can, and go from
3 there.

4 As we have said earlier, the plaintiff gets the
0 2 : 4 8 5 privilege of going first; and plaintiffs' counsel will proceed
6 at this time.

7 MR. BUZBEE: Thank, your Honor. May it please the
8 Court.

9 THE COURT: Sure.

0 2 : 4 8 10 MR. BUZBEE: Hi, I'm Tony Buzbee. We briefly met
11 before we started. I'm really happy to see you-all here. And
12 I want to talk to you today about responsibility. And the
13 define -- it's funny. We talk about responsibility a lot; but
14 the definition that I could find was "moral, legal, or mental
0 2 : 4 8 15 accountability." Or as Truman used to say, "The buck stops
16 here."

17 When you work in a plant, you shouldn't expect to
18 be exposed to something -- and this is the general premise of
19 our case -- you shouldn't expect to be exposed to something
0 2 : 4 8 20 that sends you and over a hundred other people to the hospital,
21 two different hospitals, in ambulances, and then have the
22 company that owns the plant tell you later, "We don't know what
23 it was." That's our case.

24 This is Garner versus BP Products. You're going
0 2 : 4 9 25 to learn in this case that there has been a pattern of

0 2 : 4 9 1 unnecessary and unlawful emission events, poor operation and
2 maintenance at the BP Texas City plant.

3 When you drive down 45 --

4 MR. GALBRAITH: Your Honor?

0 2 : 4 9 5 THE COURT: Yes.

6 MR. GALBRAITH: I have to interpose -- I believe I
7 have to interpose an objection at this time to -- subject to
8 your prior rulings and motion in limine and such, this is --
9 pattern of conduct is irrelevant and immaterial to this case
0 2 : 4 9 10 concerning itself with April 19, 2009 [sic].

11 There has been no proper predicate as of yet. It
12 is improper character evidence. There's been no showing of
13 similarity, substantial, reasonable, or otherwise. It violates
14 this Court's prior rulings, Federal Rule 404(b), Federal Rule
0 2 : 4 9 15 403 --

16 THE COURT: Well, as to whether or not it violates my
17 rule, let's leave that part out, because what you need to be
18 making is an objection. And if that's your objection, then I
19 understand that.

0 2 : 5 0 20 But the Court's not going to permit counsel on
21 either side to remind the Court as to what my rulings might
22 have been.

23 MR. GALBRAITH: Also, it's not reasonably restricted
24 to time, area, or scope.

0 2 : 5 0 25 THE COURT: All right. The objection is overruled.

02:50

1 Let's proceed.

2 MR. BUZBEE: I'm going to try to move this case, from
3 my side, with my team, as quickly as possible. This is the
4 most important case we've tried in this state this year.

02:50

5 On April 19th of 2007, 110 contract workers --
6 that is, non BP employees, but people that worked at the
7 plant -- were triaged and taken to two separate hospitals and
8 decontaminated.

02:50

9 More than 189 people smelled an odor that's been
10 described, you'll learn, a lot of different ways. It's kind of
11 like if the odor were here and I walked out the door and said,
12 "Okay. Each of you come and describe to me the odor." You
13 know the game; everybody is going to give a little different
14 description.

02:51

15 The symptoms that the people had were burning
16 eyes, nausea, burning throats, throwing up, and even some
17 people passed out.

18 BP, as I said, has never identified what the
19 substance was that these hundred and ten or so odd people were
20 exposed to.

02:51

21 We're going to prove to you in this case that BP
22 is a serial polluter.

23 MR. GALBRAITH: Your Honor, I must interpose the same
24 objection.

02:51

25 THE COURT: It will be overruled.

02:51

1 MR. GALBRAITH: Thank you, sir.

2 MR. BUZBEE: You know what they say about history:
3 History repeats itself because no one was listening the first
4 time.

02:51

5 In the five years leading up to this case, I'm
6 going to bring you proof that at BP there have been over 500
7 releases --

8 MR. GALBRAITH: Your Honor --

9 MR. BUZBEE: Oh, my goodness.

02:51

10 MR. GALBRAITH: -- might I have a running objection to
11 this same line of testimony or questions regarding incidents
12 other than those related --

13 THE COURT: Well, first of all, there's no testimony
14 and there are no questions. This is an opening statement.

02:52

15 Let me just say to the ladies and gentlemen of
16 the jury it is the province of each of the lawyers to tell you
17 what they believe the evidence will be in the case.

18 Did my system go out on me?

19 MR. BUZBEE: We can hear you, sir.

02:52

20 THE COURT: Yeah. It's something -- yeah, okay.

21 It's within the province of each counsel. Both
22 plaintiffs and defendants will tell you what they believe the
23 evidence, from their perspective, will show.

24 This is not evidence. Lawyers do not give you
02:52 25 evidence. The evidence comes from the witness stand and it's

02:52 1 that evidence that the Court permits. So, everything that
2 lawyers say may or may not become evidence in the case. It
3 will have to come from the testimony as well as the exhibits
4 that are admitted.

02:52 5 So, having said that, I'm not sure what a running
6 objection does, because I have -- I'm concerned about that.
7 The lawyers can say later on, "I had an objection to everything
8 that was said."

02:52 9 And if you want to object to the opening
10 statement that is being made, I'm overruling that objection
11 because these are simply representations, in my view. And the
12 Court's view -- that is, the Court -- I mean, the law's view of
13 what plaintiffs' counsel intends to show, whether he's
14 permitted to do it or not.

02:53 15 And I'll say the same thing to him if he objects
16 to your --

17 MR. BUZBEE: I won't.

18 THE COURT: -- opening.

19 Let's proceed.

02:53 20 MR. BUZBEE: I'm going to move this along.

21 In the five years leading up to April 19th of
22 '07, BP had 500 -- "500" -- leaks, spills, odor events, and
23 releases, 45 of which were absolutely unlawful.

02:53 24 You're going to hear from the BP fire chief, who
25 is sitting out in the hallway, before he retired in August that

0 2 : 5 3 1 BP was averaging one fire a week at that plant.

2 And you're going to hear this -- this phrase over
3 and over, "an odor event." What it means is something has
4 released and it's so caustic or so toxic that it gets put into
0 2 : 5 4 5 BP's internal database. And you're going to learn that over 70
6 percent of the time when one of these events occurs -- and I'm
7 talking about -- not just, you know, you drive down the freeway
8 and you smell something bad. I'm not talking about that.

9 I'm talking about an incident that's serious
0 2 : 5 4 10 enough it goes into their database and they're supposed to
11 track it, investigate it, and source it. You're going to learn
12 that over 70 percent of the time they don't do that. And
13 that's what happened in this case. This is one of these odor
14 events. It just so happened it sent 110 people to the
0 2 : 5 4 15 hospital.

16 There's some terms we're going to talk about. A
17 leak -- I mean, some of these -- it looks self-explanatory, but
18 there is -- there are some terms of art. You probably know
19 this. A "leak" means some sort of liquid left a pipe or a
0 2 : 5 4 20 vessel. Okay? A "spill" means a vessel turned over, a bucket
21 turned over, that sort of thing.

22 Let's make sure we're all on the same page. A
23 "release" has to do with a vapor. All right? So, a pipe
24 busts, valve -- you're going to see valves all the time out
0 2 : 5 4 25 there because of poor maintenance, no inspection, no pipe

02:55 1 integrity program, and, frankly, spending no money on the
2 plant. Releases occur all the time. Vapors are in the air all
3 the time out there. And, then, what is called an "odor event."

02:55 4 This is this the catchall category, you're going
5 to learn, where BP says, "Yep, we have people who were exposed
6 and they went to the hospital; but we don't know what it was.
7 And, so, we -- because we don't know, we don't have to
8 categorize it in A, B, or C and we don't have to tell the
9 authorities."

02:55 10 This is -- you're going to learn something about
11 something you may not have heard about. Something you may not
12 have realized is that at BP their policy is this. "If you
13 cannot source what leaked or what released or what spilled, you
14 don't have to report it." So, you're going to learn that there
02:55 15 is an incentive there for them not to find out what spilled,
16 leaked, or released.

17 Because if they don't have to determine if it was
18 enough that requires reporting to, for instance, the TCEQ, then
19 they don't have to report it. So, they can say, "Yeah. Well,
02:56 20 hey, authorities, 110 people went to the hospital. But we
21 don't know what it was; so, we -- you can't say we violated any
22 either EPA rule or the Texas Commission on Environmental
23 Quality rule, because we can't tell you what it was."

02:56 24 One thing I think is pretty commonsensical is
25 that lack of maintenance and inspections are what lead to

02:56 1 leaks, releases, and spills. In other words, we're talking
2 about a plant, you'll learn, that's more than 50 years old.
3 Okay?

4 We're talking about a plant that you will learn
02:57 5 that for almost a nine year period no money -- "no" money was
6 spent on capital improvements, on revamping the maintenance
7 program, on piping replacement, on valve replacement, because
8 someone in England, London, made the decision that, "We don't
9 have the money for that."

02:57 10 And lack of maintenance, lack of spending money
11 on maintenance, and lack of an inspection program, what is
12 called a "piping integrity program," leads to leaks, releases,
13 and spills. And you hear the lawyer over here talk to you,
14 say, "Well, I don't want talk about the 500 other ones that
02:57 15 happened leading up to this and I don't want to talk about the
16 one that happened immediately the night before or the two more
17 that happened the day before. I just want to talk about this
18 one, because we didn't figure out what it was."

19 And I'm going to suggest to you in this case, as
02:57 20 you hear the evidence, that guess what? Every single one of
21 those leaks, spills, and releases are relevant and are
22 important to you, as members of this jury, because it shows a
23 custom and practice, a course of conduct by BP that frankly
24 says, "Hey, a fire a week is par for the course. Two -- two
02:58 25 leaks on average a day, hey, we're BP."

0 2 : 5 8 1 And I'm going to suggest to you that as members
2 of this jury -- at the end of the case, I'm going to suggest
3 that you, sitting in judgment, now elevated, as the judge said,
4 have not only the ability to do something about this but I'm
0 2 : 5 8 5 going to suggest at the end of the case you have a
6 responsibility to do something about this.

7 Now, we're talking about releases -- releases,
8 spills, and leaks. You know, when I was -- I was in the
9 marines, and one of the things we had to do was go into the gas
0 2 : 5 8 10 chamber. I think one of the guys mentioned it. And we had to
11 go in there and exercise and take off our masks, and then we
12 got gassed. And we'd run out, and everybody is puking and so
13 forth. And that was -- I mean, that's what you have to do when
14 you're in the military, I suppose.

0 2 : 5 9 15 But we're not talking about that here. We're not
16 talking about you driving down 45 and smelling something and
17 saying, "That stinks," or me living up in Friendswood and I'm
18 out playing with my children and smell something, say, "That's
19 Texas City." That's not what we're talking about.

0 2 : 5 9 20 We're talking about spills and releases and leaks
21 that are so serious that you send somebody to the hospital to
22 be -- in fact, a lot of these men and women -- there's men and
23 women that were contract workers. A lot of these folks were
24 not even allowed out of the ambulances or off a bus until they
0 2 : 5 9 25 had -- they had a decontamination station set up.

02:59 1 We're talking about a serious event that occurred
2 in Galveston County, where over a hundred ten people -- and
3 we're talking about every authority responding, sending people
4 to not only Mainland Medical in Texas City but also to UTMB.

03:00 5 We're talking about toxic and hazardous chemicals, corrosive,
6 reactive, explosive, flammable; and we're talking about
7 polluting our air, our ground, and our water. That's what
8 we're talking about in this case.

9 You're going to learn that -- and some of you
03:00 10 with experience at plants know this already. The number one
11 rule, everybody will say -- you'll listen for this because I'm
12 going to ask every witness. "Witness, what is the number one
13 rule at a chemical plant?"

14 "Keep it in the pipes."

03:00 15 Number one rule, keep it in the pipes. And if it
16 leaves the pipes, something went wrong. Simple as that. From
17 January 1, 2005, to June 30, 2005, there was 76 leaks from
18 valves, three leaks from pumps, 16 leaks from connectors, a
19 total of 95 leaks in just a six-month period. That's a lot of
03:00 20 leaks. Thirty-three of those leaks were from the Cat 3 Unit,
21 which is immediately adjacent to where these folks were
22 working. And 21 leaks were from the actual unit these folks
23 were working in. That's in a six-month period.

24 The next six-month period, from July 1, '05, to
03:01 25 December, 184 leaks from valves, 48 leaks from pumps, a total

03:01 1 of 232 leaks in six months. I mean, let that sink in here. I
2 mean, we're not talking about, oh, you know, we know leaks
3 happen. I mean, stuff happens. You know what they say, stuff
4 happens. It's not that. This is something different.

03:01 5 This is a pattern and a course of conduct that
6 continues to get worse. In six months, 232 leaks. The next
7 six-month period, 123 leaks. The next six-month period, 196
8 leaks. We starting to see a course of conduct here and a
9 pattern? There's a pattern.

03:01 10 From January 1, '07, to June 30th -- and we're
11 talking about leading right up to the incident in this case --
12 82 leaks, five of which from that Pipestill 3A Unit, which is
13 where these -- all these folks were working. What happens
14 is -- as some of you know, probably a lot better than me in
03:02 15 some cases.

16 But at the BP plant there's certain -- you're
17 going to hear these terms like "pipestill" and "SRU Unit" and
18 "Alky 2 Unit." And we're going to show -- I'm going to bring
19 you a little chart so we can all kind of orient ourselves about
03:02 20 what area of the plant -- because we're talking about a 2 mile
21 area, 1200 or so acres.

22 When you drive down 45 and you see the pipes over
23 there to your left, before you get to Galveston, take a whiff
24 of air. That's it, that's BP Texas City. And the reason
03:02 25 you're going to hear these terms, because I'm going to try to

03:02 1 orient you, and orient myself, quite frankly, about where these
2 things are coming from so you can see that this is not one
3 particular unit within BP or one particular area. We're
4 talking about a plant wide problem. I mean, a plant wide
03:02 5 problem that can be -- and you'll see that -- I'm going to
6 bring you the documents.

7 It's not going to be Tony Buzbee from Friendswood
8 telling you, "Here's the truth, ladies, women." It's going to
9 be -- it's going to be BP's own documents. So, you don't have
03:03 10 to believe -- I mean, I don't think I'm a liar; but you don't
11 have to believe me. Believe their documents, thousands and
12 thousands of them, that our folks went through and pulled all
13 this information out.

14 Now, April 19th of 2007, the Pipestill 3B Unit
03:03 15 was being what they call "turned around." That means it was
16 down and they had about 450 or so contractors, non BP
17 employees, non union employees, out there working in the middle
18 of the night essentially, turning it around and getting it
19 ready to be brought up, because -- brought back up online,
03:03 20 because at the plant -- if the plant is not operating, BP's not
21 making money. Simple as that.

22 At about 8:00 o'clock, you're going to hear that
23 that was when the first -- a few minutes, really, before
24 8:00 o'clock -- I'll show you the document. That's when the
03:04 25 first person up on a tower smelt something. And that person

03:04 1 was overwhelmed by the smell.

2 And it's not something that smelled foul. It's
3 something that overwhelmed this person, almost made them pass
4 out. And they started coming down. And then the smell
03:04 5 continued to grow, and people started dropping. I mean, it was
6 kind of like you see these military movies, you know, gas, gas,
7 gas, and, you know, some people freak out and some people, you
8 know, keep their heads. And, so, it's kind of that situation.

9 We're talking about hundreds of people are
03:04 10 smelling this. And that's when -- and then it took them
11 another -- you will learn, another hour to sound an alarm -- an
12 hour to even sound an alarm to tell everyone within the plant,
13 "Hey, there's something here. People are passing out. People
14 are reporting that their eyes are burning, that they can't
03:04 15 breathe. They're coughing, they're throwing up," etcetera. It
16 took an hour.

17 And we're going to focus in on why it took an
18 hour, and we're going to focus in on the alarm system. And
19 we're going to focus in on the maintenance of the alarm system
03:05 20 even. Because it's indicative, it's a good indication for you,
21 as jurors, of how BP looks at safety.

22 And that's why, when you walked through the hall
23 and saw Fire Chief McLemore, his testimony -- he's a nice
24 old -- older gentlemen, gray hair, you may have seen in the
03:05 25 hall. His testimony is going to be so important, because he's

03:05 1 going to talk about the fight he personally had with BP, trying
2 and trying and trying to have them spend money on a plant wide
3 alarm that they simply were not going to spend the money for,
4 period. For nine years, he had this fight.

03:05 5 You're going to learn in this case that not only
6 are there hundreds and hundreds of releases, of leaks every
7 year; but also, kind of more important for our purposes, is
8 that BP, when they have a leak, they don't investigate it
9 properly or thoroughly.

03:06 10 For instance -- this is just a -- what you call a
11 "for example." I'm showing you there -- one, two, three, four,
12 five, six -- seven instances where -- exchanger release of a
13 hundred pounds of hydrocarbon, an exchanger release of
14 200 gallons of hydrocarbon, an exchanger release of 350,000
03:06 15 gallons of hydrocarbon, and so on and so forth, were not
16 investigated. I mean -- I just mean it spills, it gets out of
17 the pipes, and they simply don't investigate.

18 Now, those of you that work in an industrial
19 setting, one thing you're going to learn in this case is
03:06 20 there's something called "critical factors" and "root cause."
21 And "root cause" is kind of like -- it's self-explanatory, but
22 it means, "What was it, what was the one thing that caused this
23 that if we fix in the future can keep this from happening
24 again?" That's the "root cause." No root cause, not found,
03:07 25 not even looked for. That's just seven or eight examples.

03:07 1 Not only did they not investigate leaks and
2 spills and releases, but they also don't investigate odor
3 events. And it's even easier not to the investigate an odor
4 event, because you have an odor which is obviously from some
03:07 5 chemical or substance in the air, it overcomes -- somebody gets
6 overcome, the wind eventually blows it away.

7 And then BP comes out, says, "Oh, I don't smell
8 anything. We're not able to determine. Chalk it off as
9 another odor event, no report needed." That's a practice.
03:07 10 That's a course of conduct. That happens all the time. And
11 I've already explained it. Why does that happen? Because the
12 requirements are the way they are.

13 I'm going to show you BP's policy. I'm going to
14 show you that any reasonable and fair minded person can look at
03:08 15 it and say, "Yes, that's a policy that dis-incentivizes people
16 to report."

17 I went through all the documents. We talked
18 about how if you don't source it you don't have to report it.
19 And you can see there just one example of a -- like, a four
03:08 20 year period where -- identified odors versus non identified?

21 Now, we've --

22 THE COURT: You've got ten minutes.

23 MR. BUZBEE: Yes, sir.

24 You don't learn from history, you're bound to
03:08 25 repeat it. Let's go through a few more of these things.

03:08 1 The pipestills where these men and women were
2 working have a history of unremitted problems. There are
3 violations, twenty-one leaks in that area alone. And, then, to
4 compound this, there was absolutely no maintenance -- not just
03:08 5 minimal maintenance, not just failure to maintain properly, but
6 no maintenance for over a year.

7 You're going to learn that the pipestill unit
8 where these folks were working is about -- oh, gosh -- 800,
9 900 feet away from the SRU Unit. And we're going to prove to
03:09 10 you that where this hydrocarbon, this -- carbon disulfide is
11 what it was. BP was ordered by the Court -- ordered by the
12 Court to identify it, and they failed to do it.

13 We went out and hired experts that are going to
14 come to you and identify for you the source of the leak. And
03:09 15 we're going to tell you and prove to you that the source of the
16 leak was the SRU Unit. That's where the carbon disulfide came
17 from.

18 We're going to prove to you that that particular
19 unit has a history of problems. You can see what's leaked out
03:09 20 of that thing in that time frame. Let's talk about in the days
21 leading up to the leak.

22 Now, listen. We're talking about one month
23 before this happened. In March -- let's start with January.
24 January, a couple of months before it happened, workers were
03:10 25 overcome by a strong odor causing nausea and sore throat. Five

03:10 1 days before it happened, workers were overcome by the same
2 smell, causing nausea.

3 And, then, we're literally 24 hours before all
4 these folks went to the hospital -- why am I telling you this?
03:10 5 Because at some point you snap to and say, "Hey, wait a minute.
6 Something is happening here."

7 Small things lead to -- you know, small holes
8 sink big ships. I mean, come on. And no one at BP snapped to
9 and said, "There's a problem. People are being overcome with
03:10 10 odors. They're going to the hospital. Are we going to look
11 into this?" They didn't investigate these at all.

12 So, you can see, January 22nd, April 12, and then
13 24 hours -- less than 24 hours before, five workers overcome
14 by -- and you'll hear them say, "the same odor that we smelled
03:10 15 20-something hours later." They did nothing. Nothing.

16 That's BP's corporate philosophy, "If you ignore
17 it, maybe it will go away." And it did go away. It was blown
18 away by the wind eventually, after 110 people went to the
19 hospital.

03:11 20 Now, let me be clear with you something about
21 this [sic]. We'll get through -- let me just --

22 Nick, turn that off for a minute.

23 I've got a few more minutes. I want to say this
24 to you.

03:11 25 This is not -- I'm not going to try to tell you,

03:11 1 try to convince you that -- that 110 people going to the
2 hospital, "Give me -- give me millions and millions and
3 millions of dollars." It's not that. That's not this case.
4 All right?

03:11 5 These people were overcome. They live with, "I
6 don't know what I was exposed to. They won't tell me what I
7 was exposed to." They missed three, four, five days of work.
8 Some of them are still having problems. But I'm not going to
9 bring you a doctor that says, "This man, this woman is ruined
03:11 10 for life." I'm not going to do that. I've got more -- I mean,
11 myself, frankly, I feel like I have more credibility than that,
12 to try to prove to you these men and women are ruined for life.
13 That's not this case. Let me tell you what this case is.

14 At the end of the case, I'm going to ask you to
03:12 15 find that BP was negligent and caused that release; and then
16 I'm going to ask you to give these gentlemen and this lady
17 money for their hospital bills, for their follow-up pulmonary
18 treatment, for their days missed from work, some mental anguish
19 from not knowing what they were exposed to, for the cost they
03:12 20 had to go to to get to this point. So, we're not talking about
21 millions and millions of dollars.

22 But, then, the second phase is this. You sit in
23 judgment. This is the most important case, I'm telling you,
24 that will be tried in this state this year. And at the end of
03:12 25 the case, I'm going to ask you to punish these people, this

03:12 1 company, and I mean "punish" them, because of what they're
2 doing, what they did to these people, my clients, but what
3 they're doing to our environment.

4 And until someone stands up and says, "Enough.
03:12 5 The buck stops here," it will continue. It will continue.
6 That's the reason we're here in this case. Responsibility.
7 Along with that is accountability. And at the end of the case,
8 I'm going to ask you to hold them accountable.

9 Thank you very much.

03:13 10 THE COURT: All right. Thank you, counsel.

11 Mr. Galbraith.

12 MR. GALBRAITH: Yes, your Honor.

13 Before I do anything else, I would like to tell
14 you what I think the evidence is going to show in this case,
03:13 15 why we're here, and what we stand for here today.

16 On April 19th of 2007, when we first learned that
17 somebody was reporting an unusual odor, we responded. We
18 jumped into action. You're going to get a chance to see that.
19 I'm thankful for that.

03:13 20 We did so because we wanted to find out, no one
21 more than us wanted to find out whether anybody was exposed to
22 any unsafe level of anything on our plant. We checked out
23 people, we checked out air, we checked out our plant, we
24 checked out our equipment.

03:14 25 And this case asks, "What did BP do wrong on

03:14 1 April 19, 2007?" And our investigation will show you BP did
2 nothing wrong on April 19th, 2007. In fact, what I believe is
3 going to be the evidence in this case is what we did on
4 April 19, 2007, and over the next several weeks shows you that
03:14 5 we took this very seriously, that we wanted very much to find
6 the answer. Our response was immediate, it was real, it was
7 sincere, it was honest, it was thorough, and it was vigorous.

8 And I'm going to tell you that it will, in our
9 minds and I hope in yours, satisfy you that we are running our
03:14 10 business right, we are devoting the proper resources to our
11 business. And it should give assurance to not only those
12 people who were at the plants, answer their questions, but
13 yours in the community, as well.

14 Having said that, I'm Jim Galbraith. I'd like to
03:15 15 formally introduce myself. I've practiced law since 1978,
16 about a block right down that way, right here in Galveston,
17 with McLeod Alexander Powel & Apffel. One of the first things
18 I did in 1978 is I went to visit the BP Texas City refinery,
19 and I've been going there for one initiative or another ever
03:15 20 since. And I know those folks, and I'm glad that you're going
21 to get a chance to meet some of those folks.

22 And you're going to see the dedication they
23 bring, the competence that they bring, the expertise that they
24 bring. They don't leave it at the office. Many came out from
03:15 25 their homes that night. You're going to get a chance to see

03:15 1 that.

2 This case presents serious allegations that BP
3 takes very seriously. And we took them very seriously on
4 April 19th, 2007. I indicated to you that you will get to see
03:16 5 BP's response to workers and their workers' stated concerns.
6 No worker concerns were ignored. This case asks, "What
7 happened on the evening of April 19, 2007? Did BP do anything
8 wrong? What, if anything, caused a smell?"

9 To this day, it is an unknown smell from an
03:16 10 unknown source of an unknown cause in spite of it all, in spite
11 the plaintiffs' allegation.

12 What the plaintiffs also have to prove to you is
13 did we hurt anyone, even temporarily. And still, to this day,
14 one reason why we're here is there's no proof BP did anything
03:16 15 wrong April 19th, 2007.

16 Now, the fact of the matter is they want to talk
17 about anything except April 19, 2007. We're going to be
18 focusing on what their petition alleges, which is April 19,
19 2007, what did happen that day, what do we know about that day.

03:16 20 At about 8:45 to 9:00 p.m. there was a -- one
21 hole watch, safety watch, who was in the Pipestill 3B Unit; and
22 she reported that she smelled something unusual, not like a
23 typical refinery smell. This is not like a refinery smell.
24 This is not like something that comes from a refinery. This is
03:17 25 new and different. But she reported it on her radio, which

03:17 1 means that a lot of people heard it.

2 Now -- okay. BP's response was immediate.
3 Basically what we said was, "Okay. Get your guys down. Get
4 your people out. Let's get to the safety muster points."

03:17 5 Workers headed to the safety muster points.

6 There were, as stated, about 450 workers in this
7 unit. A hundred and some of them ultimately reported smelling
8 something. Three hundred of them, in the same area, didn't
9 report smelling anything.

03:17 10 The other thing interesting about this is that so
11 we said, "Okay. Everybody out. Stop work. Get down.
12 Somebody reported a smell. Let's go get to the bottom of it.
13 Stop work. Go to the safety muster points." While they were
14 filing down, BP was going up.

03:18 15 Why were we going up? We were going up because
16 BP has environmental air testing monitors that test the air in
17 the area. This was on a Vacuum Tower in the Pipestill 3B Unit,
18 not the 3A, which is a block away, as Mr. Buzbee indicated
19 earlier. It was Pipestill 3B.

03:18 20 It was down for a maintenance turnaround. What
21 those guys did was to go upstairs to test those environmental
22 monitors to see if they registered anything. We have monitors
23 on the ground, continuous operating monitors, that test the
24 air. We have monitors up along this tower, different levels.

03:18 25 They went up to see if they registered anything.

03:18 1 These monitors test the air and they record and
2 they alarm. Unfortunately -- I should say very, very, very
3 fortunately, none of those machines measured anything, ground
4 level or anywhere up this tower.

03:18 5 Okay. What do we know? This unit was shut down.
6 It had been shut down for months. It had been purged, cleaned,
7 drained, washed out, opened up, and ventilated for months
8 before these workers -- before April 19, 2007. Workers had
9 been working in and around this Pipestill 3B Unit and this
03:19 10 Vacuum Tower vessel for weeks.

11 Each shift, every day, the air is tested in a
12 specific test; and every day those tests gave us calm, not
13 alarm. All that is good. Okay.

14 By the way, those BP workers who were going up as
03:19 15 the others were coming down smelled no odor, saw no cloud, no
16 smoke, no dust particles, no anything. They confirmed that the
17 monitors were working, were calibrated, were on the job, were
18 sentinels on duty; but they reported nothing. That's all good.

19 Oh, by the way, some of them carried hand-held
03:19 20 monitors with them when they went up, a different kind, what
21 they call "five gas" or MultiRAE" monitors. Those -- as they
22 were going up, they were reading their own monitors. They
23 measured nothing. That's all good; but, of course, we didn't
24 stop there.

03:20 25 Now, we said there were about 450 workers in this

03:20 1 unit. Each one of those workers had, on their coveralls, a
2 personal monitor, a personal air testing monitor. It's a kind
3 of a monitor that tests for sulfur, H2S specifically. Each one
4 had one. None of them, not one out of -- and by the way, they
03:20 5 are set to record and to alarm.

6 There's two levels at which they alarm, what they
7 call the low and the high level alarm. But even the high level
8 alarm is set to alarm well before anybody could be hurt, at
9 protective levels. 450 out of 450, none of them registered
03:20 10 anything, no sulfer problems.

11 Okay. We didn't stop there. BP called the
12 surrounding units and said, "Hey, what is going on? Is it
13 steady state? Are you having any startups? You having any
14 shutdowns? Have you had any equipment failures? Have you had
03:21 15 any spikes? Have you had any excursions of temperature,
16 pressure, flow, product, anything that could say something
17 might have come from your unit?"

18 And the answer was, "Steady state. It's not us.
19 Didn't come from us."

03:21 20 We didn't stop there. That's good. All this, so
21 far, is very common, very good; but we didn't stop there. We
22 have people who we call our industrial hygiene team. They were
23 called out, came out from their homes that night. They -- they
24 have their own independent air monitoring, air testing
03:21 25 equipment.

03:21 1 They first tested the unit, Pipestill 3B. Then
2 they broadened their search and tested the plant, then
3 broadened their search and went out into the community.
4 Nothing registered. They didn't find anything.

03:21 5 That's good, but we didn't stop there. The City
6 of Texas City, not BP, the City of Texas City maintains and has
7 around the site a number of fixed base air monitoring stations.
8 Now, these are very sophisticated, very sensitive stations.
9 Most of them are evacuated canister stations that are -- that
03:22 10 can distinguish between a hundred thousand different
11 hydrocarbons, different potential things that could be
12 released. We went and collected data from those City of Texas
13 City monitoring stations to see if they picked up anything that
14 could answer this.

03:22 15 We even went and got the data from before 8:45
16 when the first report came in. We went back before and
17 collected their data. And none of those monitoring stations
18 around Texas City, anywhere, picked up anything on that evening
19 of April 19th, 2007.

03:22 20 Okay. That's good. That's good, but we didn't
21 stop there. Okay. We called out a company, CTEH, that is in
22 the business of emergency response. It's the Center for
23 Toxicology and Environmental Health. They have monitors that
24 are very sophisticated, that can distinguish between a hundred
03:23 25 thousand different compounds. They set up around Pipestill 3B

03:23 1 and monitored for weeks and even longer in some instances; and
2 they found nothing that could explain what was alleged or what
3 was reported April 19th, 2007.

4 Now, why did we test for that long? Because in
03:23 5 our experience, if you have a leak of magnitude, that a lot of
6 folks smell, that covers a lot of geography, it's not the kind
7 of leak that fixes itself. Generally speaking, if it's a pump
8 seal that blows, you can find it; if it's a tube bundle in a
9 heat exchanger blows, you can find it.

03:23 10 By the way, all those instances that they
11 mentioned, all those instances they mentioned, they know about
12 them because we document them, we report them, we investigate
13 them. How do you know we investigate them? Because he's got
14 the documents to prove it. When it says we had a certain
03:24 15 quantity from a certain valve, that's because we investigated,
16 not because we didn't. They know about it because we told
17 them.

18 Okay. All right. We didn't stop there. After
19 CTEH that night, we called out that night our LDAR team. Why?
03:24 20 These are guys whose sole job is leak detection and repair.
21 And they're armed with some pretty state-of-the-art, very
22 unusual equipment. They have -- and I hope you're going to get
23 to see one of their cameras. It's a hundred thousand dollar
24 camera. Not too many plants have them. We have them.

03:24 25 And they came out that night to monitor with

03:24 1 their infrared camera equipment, from their homes, again. They
2 scoured the site -- by the way, this little camera, I think,
3 is -- I think it's amazing. You can take a Bic lighter and put
4 out the flame, and you still got the butane that's coming out,
03:25 5 like a match; and from across the room, with that little
6 camera, you can see that. You can see a leak of that
7 magnitude, that tiny a magnitude, if you will.

8 They scoured the site with it. They used that
9 camera, and they found nothing. Okay. Again, that's a good
03:25 10 thing. That's good. We're doing okay.

11 Now, by this time, hundreds of people had come
12 down, had gone to the safety muster point, they had gone to the
13 lunch tent. And by this time, there were a number of folks
14 complaining of a myriad of symptoms. So, we called out our
03:25 15 emergency medical technicians, to get them checked out, to
16 document what they were complaining of, to document which ones
17 requested medical checkout, which ones did not.

18 Now, keep in mind, all of these folks work for
19 contractors who are sophisticated, who have their own policies
03:25 20 and procedures, and who are responsible for taking care of
21 their own workers if there's a claim for an on-the-job injury,
22 which this was. So, we didn't override those employers who
23 were taking charge and taking responsibility. We were
24 facilitating, not frustrating. We were helping those employers
03:26 25 who had the responsibility to take care of their workers if

03:26 1 there's a complaint for an on-the-job injury.

2 They were there, too. We were working with them.
3 But we supplied buses, and we took 85 in the buses. A few more
4 went, otherwise; but 85 went in our buses to Mainland Center
03:26 5 Hospital and to UTMB. All of those folks were seen and
6 released in stable condition.

7 There are two exceptions to that statement. All
8 these people were seen and released, except one had admittedly
9 preexisting high blood pressure that had gotten out of whack.
03:26 10 He wasn't controlling it with his medication like he should
11 have. They found it on these exams; and they said, "You need
12 to be kept overnight for observation, until we can get your
13 blood pressure corrected and your medication lined out."
14 Admittedly, reportedly, it had nothing to do with April 19,
03:26 15 2007.

16 The second exception is a guy who had diabetes,
17 long, preexisting diabetes. His blood sugar had gotten out of
18 control. It wasn't controlled as he should control it. It had
19 gotten out of whack; and they said, "We need to observe you
03:27 20 overnight to get your blood sugar lined out," reportedly,
21 again, having nothing to do with April 19, 2007.

22 So, the point is these are real medical checks.
23 They did find some things, heart problems, high blood pressure,
24 and diabetes blood sugar problems, kept two workers. The rest
03:27 25 of them, they said, "Go back to work. Go back to work."

03:27 1 Okay. All right. You will -- I want to caution
2 you when you look at some of these medical records. They said,
3 "Why are you here"; and they said, "Chemical exposure." So,
4 you'll see on the medical records "chemical exposure." That's
03:27 5 what you'll see. But I also caution you that there are tests,
6 objective tests, which are designed to let us have some
7 information about whether there has been a significant
8 pulmonary irritant exposure, a lung exposure, is there edema on
9 the lungs, is there rales and rhonchi, are there abnormal
03:28 10 breath sounds, is there pulmonary function studies
11 abnormalities.

12 I want you to look because in all of these
13 records, every time there's a lab test, blood test, x-rays,
14 lung function tests, we don't get what we expect to find:
03:28 15 objective signs confirming any significant pulmonary irritant.
16 That's all good. That's common, but we didn't stop there.

17 We gathered the meteorological data for Texas
18 City. And as you might expect with the multitude of chemical
19 neighbors in Texas City, there's a multitude of wind data. And
03:28 20 we gathered it. Why? Because we wanted to know what upwind
21 was looking like, we wanted to know direction. And we found
22 it.

23 It suggests that the source was off of our
24 premises, upwind of our plants from somewhere around the
03:28 25 neighbors of -- of some of our neighbors, like StanTrans or the

03:28 1 Port of -- Texas City Terminal Railway or the docks, for
2 example. But the wind was out of the southeast, which is the
3 predominant wind in this area. It was about 4 or 5 or 6 miles
4 an hour. It wasn't calm; it wasn't gale force. It was about 5
03:29 5 or 6 miles an hour that night, pretty steady. That's good.
6 That's good, but we didn't stop there.

7 We appointed a formal investigation committee
8 following April 19th, 2007. Six people basically left their
9 jobs. They still had some remnants of their responsibilities;
03:29 10 but for five weeks they basically did nothing except try to get
11 to the bottom of this and try to get to the answers, try to
12 find the source.

13 And in the course of that time, they took
14 multiple interviews of workers, both contract workers, contract
03:29 15 supervisors, BP workers, BP supervisors. They went to units.
16 They collected supervisors' logbooks, operations logbooks,
17 maintenance logbooks. And they collected digital PI data.

18 You're going to hear about digital PI data. Many
19 of these units are connected through computers to printouts.
03:29 20 And you can go back and you can look at a unit and you can see
21 if this vessel -- you can see if it's had any temperature
22 excursions or if there are any lineup problems with the
23 equipment or whether they had any pressure excursions or flow
24 rate excursions. All these monitors that monitor these
03:30 25 parameters of these units can be printed out, and it's called

03:30 1 "digital PI data." And you can get it, and you can look at it;
2 and we did.

3 And why did we do that? We wanted to see if
4 there was anything anywhere in any of the surrounding units,
03:30 5 any of the upwind units. We didn't stop with the upwind units.
6 We went to the downwind units, too, to say, "Is there any
7 pressure excursion or temperature excursion that could explain
8 this?" And the answer is there was none.

9 Okay. All that our investigation committee could
03:30 10 do in its five weeks was -- and I think you're going to see
11 this -- rule out all potential sources on BP's plant. We have
12 our own conclusion that it didn't come from us.

13 There was no relief valve that popped; there was
14 no leak; there was no -- what are the other words -- no
03:30 15 release, there was no upset, there was no pressure drop of a
16 nature or of a kind that could explain this. All we found is
17 it couldn't have happened here. It didn't happen to this piece
18 of equipment. It wasn't this unit. BP took this very
19 seriously.

03:31 20 Okay. Now, the problem -- the plaintiffs do have
21 an answer. It hasn't been presented to you yet. But the
22 plaintiffs had a mask that one of the workers reportedly wore
23 in the cloud. And, so, they wanted to test this mask; and
24 whatever they found on the mask had to be what the cloud
03:31 25 consisted of. That's the premise.

03:31 1 Now, there's problems with that mask that are
2 myriad. There was no chain of custody. It set for months in a
3 cigar-smoking law office, unprotected. It was damaged in
4 transit. They didn't have a background control sample to test
03:31 5 for background. But they conclude nonetheless that it had
6 carbon disulfide on the mask and therefore the exposure had to
7 be to carbon disulfide.

8 Now, there's a problem besides the chain of
9 custody and the like. They don't tell you anything about where
03:31 10 the -- that doesn't tell you anything about where the CS2 came
11 from or its supposed source. And the other funny thing about
12 that is we don't have CS2 of a quantity, in an area, of a kind
13 that could explain this release. There's no -- generally, no
14 CS2 in refineries.

03:32 15 Chemical plants have them. StanTrans' rail yard
16 ships, loads, and unloads it on occasion. Port of Texas City
17 terminal railway loads it on occasion and unloads it on
18 occasion. The docks have it coming in and out on occasion.
19 But we don't have it.

03:32 20 We have it momentarily, in the SRU, which was
21 downwind, which did not have any excursions, in a stream that
22 is heavy H2S, hydrogen sulfide.

23 Remember all those 450 badges that had --
24 hydrogen sulfide badges? If it had come from there and somehow
03:32 25 gotten upstream without an upset, which it didn't, all 450

03:32 1 people would have smelled it, all 450 people would have big
2 time problems, and all 450 monitors would have gone ballistic.

3 Okay. The other funny thing about that mask is
4 that they say the mask had carbon disulfide on it in an amount
03:33 5 that, in my mind, says -- equates to a 12 part per million
6 exposure to CS₂, carbon disulfide, for up to 10 minutes, which
7 their -- their toxicologist agrees and concedes won't hurt a
8 flea. That's their answer. That's their explanation: It had
9 to be CS₂.

03:33 10 Okay. We didn't stop there. We want to know
11 where were these smellers located, so we could look upwind, so
12 we could get the magnitude of this release, so we could get the
13 geography of this release. Initially what was reported is that
14 it was right around this Vacuum Tower in Pipestill 3B Unit.

03:33 15 After everybody was gathered together from
16 multiple locations, we got smellers reporting it from varied
17 sites. Right in here is Pipestill 3B. We got folks downwind.
18 We got folks over here at Cat 1. Some of these plaintiffs were
19 at Cat 1. They didn't report it for 24 hours; but they're --
03:34 20 as you can see, they're blocks -- city blocks away.

21 We've got people off site of our plant north, off
22 site of our plant east, off site of our plant due east. We had
23 one plaintiff who complained from their home at 29th Street,
24 which is over a mile to the northeast. And we had three who
03:34 25 complained -- they were security guards at the Mainland Center

03:34 1 Hospital, who claimed exposure on April 19th, 2007.

2 So, what were we looking for? Why did we want to
3 know? We wanted to know the magnitude of the releases. We
4 wanted to try to find out where it came from, by looking
03:34 5 upwind. If we could get them grouped in a geography, that
6 could hone us in on where we were looking for. This gave us no
7 help at all.

8 Okay. Now, we also tried to find out what was
9 smelled. And this is odor characterization; and there's going
03:34 10 to be some individual susceptibility, individual differences in
11 odor characterization. People are going to say some different
12 characterizations. But you expect some consistency; within
13 that framework, you expect some consistency.

14 Why did we ask that? Why did we want to know
03:35 15 that? Because we were honestly trying to find an answer to
16 this. Okay? We were honestly trying to get to the bottom of
17 this. We expect consistency. What did we get?

18 Some people said it was sweet; some people said
19 it was sour; some people said it smelled like syrup; some
03:35 20 people said it was irritating; some people said it smelled like
21 nail polish; some people said it smelled like nail polish
22 remover. I want to talk about the nail polish remover. That's
23 another name for acetone.

24 How many of you have -- I don't have any men on
03:35 25 the jury; so, I can say this. How many of you have exposed

03:35 1 yourself to acetone before? Not unusual. By the way, quite a
2 few of the folks said it smelled like acetone. That was a
3 common answer. Acetone or nail polish remover was a common one
4 we got.

03:35 5 By the way, that night there were empty rail cars
6 at Texas -- Port of Texas City terminal railway, where our
7 meteorological data suggests this could have come from, that
8 were in acetone service.

03:35 9 Some said it smelled like food; some said it
10 smelled like dead people. All over the map. Smelled like --
11 we did get some rotten egg smells. Everybody pretty much knows
12 that's hydrogen sulfide or a sulfide smell. We got a few of
13 those. Old air.

03:36 14 One of the most common responses was, "I worked
15 in a refinery for a long time, and I have never smelled a smell
16 like this coming from a refinery; this was something new and
17 different; this wasn't a refinery smell like you get from a
18 refinery." I think that's very significant. But the very
19 common description by the people in the group, "I didn't smell
03:36 20 anything."

21 Okay. What complaints did this reportedly cause?
22 And, again, why are we asking this? Why are we wanting to
23 know? Because we were honestly trying to get some information
24 and learn from this so we could find out maybe where this came
03:36 25 from, who was at fault, what was the culprit. We wanted to

03:36 1 know. We expect consistency, again.

2 Why do we expect consistency? Because certain
3 things, like H2S, can cause certain symptoms but not other
4 symptoms. So, if you get all the same kind of symptoms that
03:36 5 can be caused by one thing, you think you've got a potential
6 answer and you go look for that. But you expect consistency.
7 You don't expect across the board answers like you got in
8 this --

9 THE COURT: You got about 10 minutes.

03:37 10 MR. GALBRAITH: I'm sorry, your Honor?

11 THE COURT: You've got about 10 minutes.

12 MR. GALBRAITH: Thank you, your Honor.

13 What we got is that some people said, "It made me
14 lose my appetite" and others said, "It made me hungry." Some
03:37 15 said, "It made me sleepy"; some said, "I couldn't sleep at
16 all." Some said, "It made me talk incoherently"; and others
17 said "I couldn't talk at all. I lost my voice." Some said,
18 "It made my feet swell"; but it -- but others said it caused
19 dehydration. Some said, "It made my mouth dry, cotton mouth"
03:37 20 others said, "It made me overproduce a bunch of saliva." Some
21 said, "It made my tar" -- "my stool" --

22 THE COURT: You need to slow down just a little bit,
23 counsel.

24 MR. GALBRAITH: I'm sorry?

03:37 25 THE COURT: You need to slow down just a little bit.

03:37 1 MR. GALBRAITH: Okay. I'm sorry.

2 Some said, "It made my stool look -- act like
3 tar"; others said, "It gave me diarrhea." Some said -- one
4 said, "It made my ear numb, but only one ear." One said, "It
03:37 5 made my right eye twitch, but only one eye." "Lungs hurt" is
6 one of these people here, but 75 people reported none.

7 Okay. We didn't stop there. How long did the
8 complaints last? Why did we want to know that, again? We're
9 trying to figure out what this was. We're trying to get to the
03:38 10 bottom of this. Some things are capable of causing long term
11 symptoms, some things aren't.

12 I'm going to liken this to driving down a dirt
13 road behind an 18-wheeler. If you drive long enough behind an
14 18-wheeler down a dirt road, your eyes might get scratchy, your
03:38 15 throat might get scratchy, you might even cough a little bit.
16 But when you get back on the interstate, you're okay. It won't
17 cause you six months of symptoms. Some things can, and some
18 things can't.

19 What we did was we went to the plaintiffs'
03:38 20 toxicologist, the plaintiffs' expert toxicologist. And he
21 says, "What we're dealing with here is not going to cause
22 anything that's going to last any time at all. It's going to
23 be temporary, transient effects, hours or days, nothing longer
24 than that, not weeks or months," which is the complaints up
03:38 25 until today that these plaintiffs have leveled against us.

03:38 1 Okay. Through it all, the answer to this case
2 lies in the fact that there is no evidence that BP did anything
3 wrong on April 19, 2007. Without that, plaintiffs can't
4 recover. So, I'm going to tell you again. This is a case that
03:39 5 presents serious questions and serious allegations that BP
6 takes quite seriously. No worker concerns were ignored. Our
7 response, we're proud of. I think you can be proud of. We
8 took it seriously. Our response was vigorous and real and
9 honest and sincere.

03:39 10 And with that, I look forward to trying this case
11 in front of you. And I promise I'll do everything I can not to
12 waste your time. Thank you.

13 THE CASE MANAGER: All rise.

14 THE COURT: Take about five minutes.

03:39 15 We're going to use the podium for our questions.

16 And, ladies and gentlemen, if you want to stretch
17 for about five minutes and step outside and walk back, feel
18 free to do so.

19 *(Recess was taken from 3:39 to 3:49 p.m.)*

03:49 20 *(Jury present)*

21 THE COURT: All right. Please be seated.

22 All right, counsel. Who is your first witness?

23 MR. BUZBEE: Your Honor, we're going to call Teresa
24 Dobbins.

03:49 25 THE COURT: Okay.

03:49

1

MR. BUZBEE: She's right out in the hallway.

2

THE COURT: Okay.

3

(Witness being summoned to the stand)

4

03:49

5

THE COURT: Ms. Dobbins, please -- come forward, please. And if you'll come around to my left here, and I will swear you in.

6

7

Raise your right hand, please, ma'am.

8

9

03:50

10

Do you solemnly swear or affirm that any testimony you give in this case will be the truth, the whole truth, and nothing but the truth, so help you God?

11

THE WITNESS: I do.

12

THE COURT: Please have a seat in the witness box.

13

14

All right. I think there should be a microphone close by there. Make sure you have it aligned. Okay?

03:50

15

Counsel, go ahead.

16

MR. BUZBEE: Thank you, your Honor.

17

TERESA DOBBINS, DULY SWORN, TESTIFIED:

18

DIRECT EXAMINATION

19

BY MR. BUZBEE:

03:50

20

Q. Hi. I'm Tony Buzbee. We've never met, right?

21

A. No.

22

Q. Can you tell the ladies of the jury what your name is?

23

A. Teresa Dobbins.

24

Q. Okay. You received a subpoena to come here?

03:50

25

A. Yes.

03:50

1 Q. What's your education, Ms. Dobbins?

2 A. A year and a half of college.

3 Q. Okay. Do you ever -- do you know how to read a graph?

4 A. Oh, of course.

03:50

5 Q. Okay. Let's start with that. Exhibit 2, which is already
6 in evidence --

7 MR. BUZBEE: How do you do this Elmo?

8 MR. SIMON: Just turn it on.

9 MR. BUZBEE: Put up Page 19 of Exhibit 2, which is the
10 investigation report that --

03:51

11 BY MR. BUZBEE:

12 Q. You weren't here, but the lawyer was talking about it
13 before you came in.

14 A. Okay.

03:51

15 MR. BUZBEE: I promised not to waste their time, Nick.

16 I'm a liar from the very minute -- I just
17 started, and I'm already a liar.

18 BY MR. BUZBEE:

19 Q. Ms. Dobbins, while he's trying to get that together, let's
20 just go through some stuff real quick. Let's go back to April
21 19th of 2007.

03:52

22 Who were you working for?

23 A. CSS.

24 Q. What's that? What do they do?

03:52

25 A. Certified Safety. We're a safety specialist team. We

03:52 1 specialize -- they train us to hole watch and fire watch for
2 different contractors in a refinery.

3 Q. What is a "fire watch," for those of us who don't know?

4 A. Fire watching is -- you're placed on a job to where you
03:52 5 keep your eye on a contractor for when they're welding and to
6 make sure there is no sparks to where a fire don't start. If
7 it is, you are to notify someone. If you can put the fire out,
8 put it out. If it's too big, you notify the proper people to
9 come out and put the fire out.

03:52 10 "Hole watching" is where we hole watch for
11 someone who's in a room that's confined. You go in one way and
12 come out one way, and we monitor them. We write their names
13 down and the time they went in and the time they come out.

14 Q. How long had you been doing this type of work?

03:53 15 A. Since 2006.

16 Q. Okay. So, by that point, you had been doing it over a year
17 or so?

18 A. Yes.

19 Q. Where were you working, Ms. Dobbins?

03:53 20 Am I saying you're name right? Is it "Dobbins"
21 or is it "Dobbins"?

22 A. No. It's "Dobbins," yes.

23 Q. Where were you working? Like, at the BP Texas City plant?

24 A. BP Texas City.

03:53 25 Q. We drive by it a lot, but I'm sure most of us have never

03:53 1 actually been on that plant. And I have -- would it help
2 you -- a demonstrative aid help you orient the jurors about
3 where you were in the plant? Would it help you if we use the
4 chart?

03:53 5 A. Yes.

6 Q. What I have here is just demonstrative evidence, won't be
7 offered into evidence. What I have is a map of the BP Texas
8 City plant.

9 Can you see it from here?

03:53 10 A. Yes.

11 Q. Before you were here, I was telling the ladies of the jury
12 there's different units out there.

13 A. Yes.

14 Q. Like, there's at the Alky 2 and the Cat Unit and the
03:54 15 Pipestill 3B. That's common terminology?

16 A. Yes.

17 Q. Could you tell us where were you doing this fire watch work
18 in April of 2007?

19 A. Hole watcher.

03:54 20 Q. Hole watch. Sorry.

21 A. Yes. It was in Pipestill 3B.

22 Q. And I'm going to just circle this demonstrative aid. "PS
23 3B"?

24 A. Yes.

03:54 25 Q. So, that's on our little chart, here, towards the right;

03:54

1 and I've circled it where you are. Okay?

2 A. Okay.

3 MR. BUZBEE: Now, you got that graph, Nick?

4 BY MR. BUZBEE:

03:54

5 Q. You told us you know how to read graphs. I'm pretty --
6 right?

7 A. Yes.

8 Q. Before you came in here, this lawyer for BP says there were
9 no pressure drops. Would you look at this Page 19? You see

03:54

10 the middle graph?

11 A. Yes.

12 Q. What does that say?

13 A. It's a drop.

14 Q. It says "Caustic tank pressures"?

03:54

15 A. Yes.

16 Q. What's that graph show?

17 A. It shows that there is a drop.

18 Q. Oh, okay.

19 MR. BUZBEE: Thank you, Nick.

03:55

20 BY MR. BUZBEE:

21 Q. Now, you don't have your own case?

22 A. No.

23 Q. You don't have a dog in the fight here?

24 A. No.

03:55

25 Q. You're not asking anybody for money?

03:55

1 A. Nope.

2 Q. You were subpoenaed to come here?

3 A. Yes.

4 Q. Probably not the nicest thing to be doing on a Tuesday
03:55 5 afternoon, right?

6 A. No, not at all.

7 Q. All right. What was your work schedule when you were out
8 there working?

9 A. 6:00 to 6:00, 6:00 p.m. to 6:00 a.m.

03:55

10 Q. Okay. Is that called a "graveyard" or --

11 A. Yeah, we call it "graveyard" shift.

12 Q. Okay. Yeah. I thought so.

13 Why don't you tell us, from your perspective,
14 just what happened?

03:55

15 A. The 19th?

16 Q. April 19th of '07.

17 A. We -- normal work night. Went in to work. I got my job
18 request as far as to hole watch for a contractor, which was
19 called Industrial Specialists, ISI. And they were going to be
03:56 20 doing some sandblasting.21 So, I got with the supervisor and the foreman of
22 that job, of that contractor. We went to the site in Pipestill
23 3B. The workers set up their equipment, got ready to go to
24 work. They went on in, into the confined space, to work. And
03:56 25 at that -- a little later, I started smelling an odor that --

03:56 1 actually, I had smelled the odor the day before. So --

2 Q. Ms. Dobbins, can I interrupt you right there?

3 A. Yeah.

4 Q. Because you weren't here but -- when I was telling the
03:56 5 ladies of the jury about this odor. Do your best, if you can,
6 to describe it, not only what it smelled like, but how strong
7 was it.

8 A. Well, the odor, to me, smelled like sulfa with a diesel
9 smell, you know. And it was -- it was strong. It was real
03:56 10 strong. Because it left a bad aftertaste in my mouth.

11 And I got nauseated, dizzy. The guys that also
12 were in the area, working, got real sick, also, you know, with
13 the same dizziness. And some of them vomited and everything.

14 Q. Okay. So, it was strong enough to make you feel like you
03:57 15 were going to puke or throw up?

16 A. Like I just wanted to pass out.

17 Q. Once you had this odor and you felt like you were going to
18 pass out and you saw other people having the same reaction, do
19 you remember about what time that was?

03:57 20 A. Close to 9:00 o'clock.

21 Q. Okay.

22 A. About 8:00 something, close to 9:00.

23 Q. Okay. So, somewhere between 8:00 and 9:00 o'clock?

24 A. Yes, sir.

03:57 25 Q. All right. What happened after that?

03:57 1 I mean, you had the odor, you're feeling sick,
2 you're feeling like you're passing out. There's other people
3 having the same reaction. What happened next?

03:57 4 A. Well, our -- with Certified Safety, you are to -- if you
5 feel anything that -- anything that -- or smell anything out of
6 the ordinary, we notify our foremens. And, so, a couple of us
7 notified our foremens that we smelled an odor.

03:58 8 So, what they just -- you know, if we don't feel
9 safe, we pull the guys out, because anything can happen to
10 someone in a confined space because they're closed up. So, we
11 pulled the guys out of the confined spaces to where we would
12 come down to the ground, to get to ground level.

03:58 13 And after that, we got a call from our -- one of
14 our foremens, to evacuate, you know, to pull the guys down and,
15 you know, come over to our hooch, you know, everybody -- just
16 evacuate, evacuate everybody from that area that we were in.
17 And that's what we did.

03:58 18 Q. When you got to the -- you called it a "hooch," kind of
19 like a muster point or something?

03:58 20 A. Well, we went to our hooch first; and then we were
21 evacuated to Muster Point 3.

22 Q. Okay. Once you got to the muster point, just tell us what
23 you kind of observed there with the other people there.

03:58 24 A. Different contractors passing out, laying on the ground.
25 They were just -- couple of them, to me, looked unconscious

03:58 1 because -- a lot of them throwing up. Most of the people just
2 sitting around, waiting to see what was going on. Because we
3 were all confused.

4 You know, we didn't know what was going on.
03:59 5 Nobody said anything. We were just evacuated. We knew it was
6 something that we smelled. But we were all evacuated, but
7 nobody notified us and told us anything.

8 Q. Do you remember what the wind was?

9 A. Not exactly.

03:59 10 Q. But if it would have been blowing or something, would you
11 remember it?

12 A. Yes.

13 Q. Okay. So, you don't remember it being gusty winds or
14 blowing winds?

03:59 15 A. No. That's so long ago --

16 Q. Okay. So, you're at the muster point; you're seeing all
17 these folks. And it sounds like you're seeing a lot of
18 different reactions.

19 A. Yes.

03:59 20 Q. It's affecting people differently?

21 A. Yeah.

22 Q. What happened then? Did you get taken to the hospital?

23 A. I got took to -- I -- they had some ambulance come over to
24 the muster point and do our vital signs. And they asked us did
03:59 25 we want to go to triage, which is the medic. So, I went to

03:59 1 medic for the nausea and dizziness that I was having. I did go
2 to the hospital. I --

3 Q. Which one did you go to, Ms. Dobbins?

4 A. I went to the doctor's office, as far as our doctor's
04:00 5 office that -- with the company, Certified Safety. They took
6 us in a van they -- you know, five at a time and took us to the
7 doctor's office.

8 Q. Okay.

9 A. And we all were seen by their doctor.

04:00 10 Q. Okay. After you were seen by the doctor, he or she checked
11 you out, what happened then?

12 A. As far as just going back to work?

13 Q. Yeah. Did you go back to work that night or what --

14 A. We returned back to work, but we were not let in.

04:00 15 Q. They wouldn't let you in the plant?

16 A. No, we were not let in.

17 Q. Okay. So, if somebody were to tell these women, these
18 ladies, go -- they went back to work, that ain't the fact at
19 all, is it? Nobody was allowed back in there, were they?

04:00 20 A. No, no one was allowed back into the plant. We -- as far
21 as me, my company, we were told to come back to work as a
22 normal work day. So, no matter where we live, we showed back
23 up to go to work. But when we got to work, they were not
24 allowing anyone in the plant. Nobody went in.

04:01 25 Q. When did BP finally allow you and your coworkers back in

04:01

1 that plant?

2 A. A couple of days later.

3 Q. Okay. So, it wasn't a situation where people got checked
4 out and they say, "Oh, there's nothing wrong with you. Go back
5 to work," and you got on the bus and went back to work?

6 A. No.

7 Q. You didn't go back for several days?

8 A. Yes.

9 Q. Okay. Now, I want to focus in on something real quickly,
10 Ms. Dobbins. You said it in passing, but it's important to me.

11 You said you smelt something the night before?

12 A. Yes.

13 Q. Tell me about that.

14 A. It was the same area where --

15 Q. Pipestill 3B area?

16 A. The same Pipestill 3B, the same area where my guys were to
17 sandblast. They -- the same area, the same odor, it just
18 wasn't as strong --

19 MR. GALBRAITH: Objection, your Honor.

20 THE COURT: Excuse me.

21 Yes, sir.

22 MR. GALBRAITH: I believe this is evidence; and we do
23 need to interpose that objection, that this is evidence of
24 other incidents not shown to be substantially similar to the
25 one in question raised by plaintiffs' pleading. There's no

04:02 1 proper predicate. It's improper character evidence, violates
2 Rules 404(b) and 403 of the Federal Rules. It's not reasonably
3 restricted.

04:02 4 THE COURT: Ladies and gentlemen, I'm going to
5 overrule the objection; but I'm going to instruct the jury in
6 this regard.

7 Ladies and gentlemen, in circumstances where
8 there is a question of other events or circumstances and the
9 plaintiff, for example, in this case may desire to use that to
04:02 10 substantiate a position on April 19 being the effective -- the
11 event date, then the Court may permit that as long as at some
12 point the evidence is connected up.

13 That's a question of law that I'll have to
14 decide, but I can't decide it without hearing the evidence.

04:03 15 And, so, I will give you instructions as are appropriate if I
16 need to ask you to disregard certain evidence, for example.

17 But in the meantime, I'm going to permit the
18 testimony; and I'll determine later on, as a matter of law,
19 whether or not that testimony was appropriate or whether or not
04:03 20 it's something you should disregard.

21 Let's proceed.

22 MR. BUZBEE: Thank you, your Honor.

23 BY MR. BUZBEE:

24 Q. You told us before the interruption that there -- it was
04:03 25 the same smell, you think?

04:03

1 A. It was the exact same smell.

2 Q. Just not as strong?

3 A. Not as strong. It was the exact same smell.

4 Q. Was it reported?

04:03

5 A. Yes.

6 Q. Was it investigated?

7 A. We -- I don't know if it was investigated, but we were
8 evacuated.

9 Q. You were evacuated?

04:03

10 A. Yeah, we were evacuated. The day before, we were
11 evacuated.12 Q. Now, when they finally let you back in the plant to work,
13 did you smell the smell again at some point?

14 A. When I was let back in to work, I was pulled off my job.

04:03

15 Q. Okay.

16 A. So, I had to go -- I was notified that I needed to go over
17 to this building and write a statement on what I smelled and
18 everything. So, I wasn't in the unit that long to even know if
19 there -- the smell was still there.

04:04

20 Because my supervisor told me that they were
21 pulling us out alphabetically ordered to go do statements. You
22 know, so, I didn't stay in there.23 Q. Okay. Let me see if I can boil this down to one last
24 question, hopefully.

04:04

25 In the two months after this April 19 incident

04:04 1 where everybody went to the hospital, were you ever involved in
2 the more than seven or eight --

3 MR. GALBRAITH: Pardon me, your Honor.

4 BY MR. BUZBEE:

04:04 5 Q. -- other incidents --

6 MR. GALBRAITH: Could I ask that that exhibit be taken
7 down until we get a ruling? Because I believe this is subject
8 to the Court's ruling that events subsequent are not relevant
9 and not to be admissible.

04:04 10 MR. BUZBEE: May I be heard on that?

11 THE COURT: What exhibit number is that?

12 MR. BUZBEE: It's a demonstrative for now, your Honor.
13 I was just trying to lay the predicate to ask a question.

14 THE COURT: All right. It needs to be taken down.

04:05 15 MR. BUZBEE: Yes, sir.

16 THE COURT: And, then, let's go ahead and hear your
17 response.

18 Go ahead.

19 Your objection is that it's a future, quote,
04:05 20 event or --

21 MR. GALBRAITH: Yes.

22 THE COURT: -- some other reportings after the date of
23 the event April 19th and therefore should not be presented to
24 the jury.

04:05 25 Let's proceed on question and answer and -- and

04:05 1 I'm not going to permit you to use that demonstrative at this
2 time.

3 MR. BUZBEE: Okay. Can I be heard on that, your
4 Honor?

04:05 5 THE COURT: Sure. Go ahead. I'm sorry.

6 MR. BUZBEE: Your Honor, this lawyer told these ladies
7 that there were no other incidents out there and they were
8 monitoring, when we know for a fact that there were at least
9 eight more in the next two months. So, I think he opened the
04:05 10 door to it. It was subject to your ruling, but he opened the
11 door by telling them that. And he shouldn't have done that
12 because --

13 THE COURT: Well, I'm telling you to take the
14 demonstrative down.

04:05 15 MR. BUZBEE: Yes, sir. Will do. Absolutely.

16 THE COURT: If you want to ask questions, if he
17 objects to it, whatever that question is, I'll take a ruling --
18 make a ruling at that time.

19 BY MR. BUZBEE:

04:06 20 Q. Ms. Dobbins, were you involved in any investigation or any
21 reporting of the eight more incidents that occurred within a
22 two-month period at Pipestill 3B?

23 MR. GALBRAITH: Your Honor, I object. It assumes
24 facts not in evidence. There is no evidence of that and
04:06 25 there --

04:06 1 THE COURT: I'll sustain it on assumes facts not in
2 evidence.

3 BY MR. BUZBEE:

4 Q. Are you aware of any subsequent or later incidents of the
04:06 5 same kind of smell from leaks, emissions, releases after
6 April 19th of '07?

7 MR. GALBRAITH: I have a similar objection, your
8 Honor.

9 THE COURT: Well, it's not --

04:06 10 MR. GALBRAITH: Not that it assumes facts not in
11 evidence.

12 THE COURT: "Similar," what do you mean?

13 MR. BUZBEE: But that -- the similar objection is that
14 it's irrelevant to the events of April 19 -- the cause of
04:06 15 anything that happened April 19th, 2007. Because of the
16 allegations raised by plaintiff, it's prohibited by 404(b).
17 There's been no proper predicate showing --

18 THE COURT: I'm going to overrule that objection in
19 light of the -- and if you would like for me to expand on that,
04:06 20 I will; but I'm going to overrule that objection at this time.

21 Let's proceed.

22 BY MR. BUZBEE:

23 Q. Okay. Let me try it again.

24 Were you involved in any either reporting, being
04:07 25 affected by, any -- any relation at all, in any incidents that

04:07

1 occurred after April 19 of '07?

2 A. I was not.

3 Q. Okay.

4 A. If there was, I wasn't aware, you know.

04:07

5 Q. Okay.

6 A. But I was not. I just know how -- I stay -- I continued in
7 Pipestill 3B for numerous -- for a good little while, until the
8 job ended. But I did wind up sick --

9 THE COURT: No. Excuse me. I think you answered it.

04:07

10 BY MR. BUZBEE:

11 Q. No. Let's don't talk about your sickness since, you know,
12 we're here -- we can't talk about that, unfortunately.

13 It's fair to say that no one from BP ever
14 informed you about any subsequent incidents in that same area?

04:07

15 A. No.

16 MR. BUZBEE: I pass the witness.

17 THE COURT: All right.

18 **CROSS-EXAMINATION**

19 BY MR. GALBRAITH:

04:08

20 Q. Hi, Ms. Dobbins. We've never meet either, have we?

21 A. No.

22 Q. I'm Jim Galbraith. How are you?

23 A. I'm fine.

24 Q. We have -- the only thing that we have regarding your

04:08

25 testimony here today is that you mentioned coming back to work

04:08 1 several days later and, as a part of the post-accident
2 investigation, post-incident investigation, you were called in
3 to give a statement?

4 A. Uh-huh.

04:08 5 Q. Is that right?

6 THE COURT: Is that right?

7 A. Yes.

8 BY MR. GALBRAITH:

9 Q. Okay. And you did that?

04:08 10 A. Yes.

11 Q. Was that on April 21st of 2007? Does that sound right?

12 A. Yes, sir.

13 Q. Okay. Now, just a couple of things since you're first.

14 One of the things that you have testified to is a that you were
04:08 15 employed -- an employee of CSS, Certified Safety Specialists?

16 A. Yes.

17 Q. That's an independent contractor --

18 A. Yes, sir.

19 Q. -- that was performing maintenance work on Pipestill 3B,
04:08 20 which had been shut down for a turnaround.

21 A. Yes.

22 Q. Is that right?

23 A. Yes.

24 Q. And as I understand it, this turnaround was a little

04:08 25 different. It was not being controlled by BP specifically. It

04:08 1 was controlled under -- by yet another contractor. Fluor was
2 the general contractor for that turnaround, correct?

3 A. I've met Fluor representatives. I -- maybe.

4 Q. Okay.

04:09 5 A. Maybe so. They -- I don't know. When I'm in a refinery,
6 I'm there for that refinery, you know.

7 Q. Okay. In other words, you got your instructions from your
8 CSS foreman?

9 A. Yes.

04:09 10 Q. And when you reported a smell or incident, it would be to
11 your CSS foreman?

12 A. Yes.

13 Q. And CSS paid you your payroll?

14 A. Yes.

04:09 15 Q. CSS gave you training?

16 A. Yes.

17 Q. Had safety people on site?

18 A. Yes.

04:09 19 Q. They had -- you've talked about how they had policies and
20 procedures for if you expected that -- or claimed that you had
21 been exposed to something on the job and received an on-the-job
22 injury; CSS had policies and procedures to provide for that?

23 A. Yes.

24 Q. To take care of you?

04:09 25 A. Yes.

04:09 1 Q. It was their concern, their responsibility, and they met
2 it?

3 A. Yes.

4 Q. And you talked about how we -- we have heard and -- were
04:09 5 you not aware that some of the contractors, with BP's help,
6 chose to send their employees, who were complaining of some
7 exposure, to Mainland Center Hospital emergency room?

8 A. Yes.

9 Q. Or to UTMB in Galveston's emergency room?

04:10 10 A. Yes.

11 Q. And yours, CSS, chose to send you to what doctor?

12 A. It was off of the Beltway, like, going toward 225. I don't
13 remember the doctor's office name.

14 Q. And you were checked out?

04:10 15 A. Yes.

16 Q. What did they do?

17 A. He checked -- he checked my -- he checked my throat. He
18 checked my eyes, my nose, and my chest. It was like a normal
19 physical that he done. But, you know, he looked in my throat
04:10 20 and checked my nose and everything like that.

21 He swabbed -- did some swabbing and everything.

22 And from -- he said from what he looks like in -- it was
23 like -- like a sinus -- sinus infection, to where everything --
24 all my sinus cavity was burnt up and my throat was, you know,
04:11 25 sore and stuff. So, he prescribed a prescription for that; and

04:11 1 that was it.

2 Q. Okay. Did he ask you to take a deep breath?

3 A. Yes.

4 Q. He put a stethoscope on you?

04:11 5 A. Yes.

6 Q. And listened to your lungs?

7 A. Like a normal physical, where, you know, they do all that.

8 Q. Okay. Any blood studies, x-rays?

9 A. No.

04:11 10 Q. Did he force you to blow into anything, like a pulmonary

11 function test?

12 A. No.

13 Q. Okay. He listened to your lungs and told you nothing about

14 any problems with your lungs, I take it?

04:11 15 A. No.

16 Q. Okay. And when he was through, after all that exam, he

17 said, "You can go on back to work"?

18 A. He just -- "You can go. You're finished." That was it.

19 Q. What -- after him checking you out, did he place you on any

04:11 20 restrictions from work?

21 A. No.

22 Q. Okay. So, he said, "You're free to go"?

23 A. To go -- yeah.

24 Q. Okay. And that's when you and other CSS employees went

04:12 25 back to the plant, to check in with Fluor or whoever and go

0 4 : 1 2 1 back to the plant, go back to the 3B Unit, right?

2 A. Well, no. We were -- we didn't go back to the unit.

3 Q. Okay. You went back to the plant with the intent to go
4 back to work?

0 4 : 1 2 5 A. Yeah.

6 Q. Okay. Okay. And that's when an investigation was
7 underway. They had not found the answer to this; and so they
8 did not allow you back on the unit, correct?

9 A. I guess so.

0 4 : 1 2 10 Q. Okay. All right. The --

11 MR. GALBRAITH: May I approach the witness, your
12 Honor, with an exhibit?

13 THE COURT: Yes, sir.

14 MR. GALBRAITH: I have another copy --

0 4 : 1 2 15 THE COURT: Would you tell us the number, please?

16 MR. GALBRAITH: Yes. BP's Exhibit 508401 -- -001.

17 BY MR. GALBRAITH:

18 Q. Which is Teresa --

19 MR. GALBRAITH: May I approach the witness, your
0 4 : 1 3 20 Honor?

21 THE COURT: Yes, sir, you may.

22 It's 5-0 what?

23 MR. GALBRAITH: 84-001.

24 MR. BUZBEE: No objection if he's offering that.

0 4 : 1 3 25 MR. GALBRAITH: I'll tender it into evidence, your

04:13 1 Honor; but I want to predicate it. I want to make sure
2 Ms. Dobbins vouches for it.

3 THE COURT: You may approach the witness.

4 BY MR. GALBRAITH:

04:13 5 Q. I think it's only fair you should see it. Can I show you
6 what's been marked as Exhibit 5084-001. Okay?

7 A. Okay.

8 Q. And that's your statement of April 21st, 2007, "Teresa
9 Dobbins," correct?

04:13 10 A. Uh-huh.

11 Q. Is that right?

12 A. Yes.

13 Q. You remember filling that out?

14 A. Well, someone else wrote it; but I remember making the
04:13 15 statement, yes, I do.

16 Q. Okay. And one thing that you reported -- by the way, this
17 was on April 21st, several days later, when your statement was
18 recorded?

19 A. Yes.

04:13 20 Q. And you were back to work two days --

21 A. We were standby.

22 Q. Okay.

23 A. We had -- CSS, regardless if we didn't work, they allowed
24 us -- we have to be on standby just in case they need us.

04:14 25 So --

04:14 1 Q. So, even though you weren't on the plant, performing any
2 job, CSS was paying you, in other words?

3 A. I didn't get paid.

4 Q. I'm sorry?

04:14 5 A. I'm sorry. No, I didn't get paid.

6 THE WITNESS: I'm sorry, your Honor.

7 A. No, I didn't --

8 BY MR. GALBRAITH:

9 Q. So, how long were you on standby?

04:14 10 A. It was maybe just a couple of hours. But the only time I
11 really got paid was to -- when I had to come and just go to the
12 doctor's office. I mean, that's two hours.

13 Q. Okay. And then you said it was several days later before
14 you went back and they pulled you aside to make your statement?

04:14 15 A. Yeah.

16 Q. And you were getting paid by -- for that, right? At least
17 you were on the job then?

18 A. No. I didn't get paid for it at all.

19 Q. Okay. When was it that you actually went back to work?

04:14 20 A. We went -- when everybody was allowed to go back into the
21 plant, it was -- I don't know -- Monday, Tuesday. I can't
22 remember. It was just --

23 Q. A few days, two or three days?

24 A. It was -- yeah, a few days. Not, like, a week or something
04:15 25 like that.

04:15 1 Q. Okay. And when you characterized this -- how long have you
2 worked in refineries, let me say, or chemical plants?
3 A. Since 2006.
4 Q. Okay. So, for quite a number of years?
04:15 5 A. Yes. I still work in a refinery.
6 Q. But at the time, April of '07, you hadn't worked there
7 for -- about a year in the refinery?
8 A. Yes.
9 Q. Fairly new to the chemical plant, refinery business?
04:15 10 A. Not new to it; but just being in it, yes.
11 Q. You characterized this -- this smell was something strange?
12 A. Yes.
13 Q. This was not something that you normally smell in a
14 refinery?
04:15 15 A. No.
16 Q. It came from somewhere else, based on your experience?
17 A. It -- yeah. It wasn't -- it wasn't a typical smell that
18 you would smell in a unit that's down, in other words. If the
19 unit is supposed to be down, it's not the normal smell you
04:15 20 would smell. Because that's not the first plant I've been in.
21 Q. First, I just got to ask, you don't know anything about the
22 source of the smell on April 19th, correct?
23 A. No.
24 Q. Where it came from, what caused it, anything like that?
04:16 25 A. No.

0 4 : 1 6 1 Q. The smell that you are reporting, now, the night before,
2 you don't know anything about its source or where it came from,
3 correct?

4 A. No.

0 4 : 1 6 5 Q. Or what caused it?

6 A. No.

7 Q. Is that correct?

8 A. That's correct.

9 Q. And when you reported it the night before, it was to your
0 4 : 1 6 10 CSS supervisor?

11 A. Yes.

12 Q. Okay. And you're saying you don't know whether they
13 investigated or not but you were evacuated?

14 A. Yes, we were evacuated for some reason.

0 4 : 1 6 15 Q. Okay. What did they do while you were evacuated; do you
16 know?

17 A. When -- that night that we evacuated, we just come out of
18 the unit and we would go to our hooches, you know, until
19 further notice if we needed to go to a muster point or to go to
0 4 : 1 6 20 the lunch tent.

21 Other than that, all the times, if you evacuate,
22 you don't necessarily have to leave the plant. You would just
23 come out of the unit itself and go to your hooches, wherever
24 your station is as far as that contractor, you know.

0 4 : 1 7 25 Q. And depending upon the event, you may be called upon to go

04:17 1 to your hooch, which is out of the plant, theoretically out of
2 harm's way?

3 A. Yes.

4 Q. Or to a muster point, like Muster Point 3, which is a
04:17 5 safety muster point?

6 A. Yes.

7 Q. Or to the lunch tent?

8 A. Yes.

9 Q. Okay. And those are pretty much -- and at the lunch tent,
04:17 10 you can get your safety meetings and training from your own
11 employer and the like, right?

12 A. Yes.

13 Q. I've got that basically right?

14 A. (Indicating).

04:17 15 MR. GALBRAITH: I think that's all I have. Thank you,
16 Ms. Dobbins.

17 THE COURT: Were you offering the exhibit or just
18 simply --

19 MR. GALBRAITH: Yes, your Honor. I tendered it at the
04:17 20 time.

21 THE COURT: And I think -- the objection is withdrawn
22 or there's no objection?

23 MR. BUZBEE: No objection to that.

24 THE COURT: All right. It's admitted.

04:17 25 Anything on redirect?

04:17 1 MR. BUZBEE: Very briefly, sir.

2 **REDIRECT EXAMINATION**

3 BY MR. BUZBEE:

4 Q. He was asking you about the source, and I want to be sure
04:18 5 we're clear. You're not saying it came from outside the plant?

6 A. No, I'm not saying that, no.

7 Q. I didn't think so.

8 A. No.

9 Q. The plant is in Texas City, right?

04:18 10 A. Yes.

11 Q. Was Texas City evacuated?

12 A. No.

13 Q. Did they evacuate the ship channel?

14 A. No.

04:18 15 Q. Okay. They evacuated the plant where the odor was?

16 A. They evacuated Pipestill 3B.

17 MR. BUZBEE: Okay. Your Honor, I pass the witness.

18 THE COURT: You may step down, ma'am.

19 MR. GALBRAITH: I have a brief recross, and it is
04:18 20 subject to the redirect.

21 THE COURT: No, sir.

22 Here is the way we're going to operate. We're
23 going to go plaintiff, defendant, plaintiff. And then, when
24 it's your turn, we'll go defendant, plaintiff, defendant.

04:18 25 Now, let's approach the bench for just a second.

04:18 1 Let me make sure we're -- hold on just one second.

2 *(At the bench with all counsel)*

3 THE COURT: Let me just make sure we got the house
4 rules together here. It's going to be Federal Rules, and we're
04:19 5 going to abide by those. Number two, when a witness hits that
6 witness stand, you can take that witness or you can reserve;
7 but you can't do both. And that applies both ways.

8 Now, if you say, "I don't want to question that
9 witness now. That's my witness. I'll call him later," that's
04:19 10 fine. But you cannot let a witness hit the witness stand and
11 say, "Well, I'm going to ask a few questions and I'm going to
12 reserve a question." There's no reservation here. This is a
13 federal reservation, not a lawyer reservation. So, I want you
14 to make sure that you take the witnesses as they come or you
04:19 15 reserve completely. Okay?

16 MR. BUZBEE: Yes, sir.

17 THE COURT: All right. What was your question, for
18 the record?

19 MR. GALBRAITH: Where was she within Pipestill 3B.

04:19 20 THE COURT: Okay. I'm not going to permit that.

21 Let's proceed.

22 *(In open court)*

23 THE COURT: You may step down.

24 Do you want to excuse this witness?

04:20 25 MR. BUZBEE: Please, your Honor.

04:20

1

THE COURT: You may be excused.

2

MR. BUZBEE: Nice meet you. Take care.

3

THE COURT: Who is the next witness?

4

MR. BUZBEE: The next witness, your Honor, is Paula

04:20

5

Jowell.

6

(Witness being summoned to the stand)

7

MR. BUZBEE: I may be butchering her name.

8

THE COURT: Spell the last name, if you would.

9

MR. BUZBEE: J-O-W-E-L-L.

04:20

10

THE COURT: Okay. All right.

11

Is that Ms. Jowell coming now?

12

MR. BUZBEE: That's her, your Honor.

13

THE COURT: All right. If you'd come around,

14

Ms. Jowell, I'll swear you in.

04:20

15

Right there. I'm going to swear you in. Raise

16

your right hand.

17

We're going to turn the air conditioning on in a

18

minute.

19

THE WITNESS: It's cold.

04:20

20

THE COURT: You must have come from outside.

21

THE WITNESS: Yes, I was outside.

22

THE COURT: It's a little bit cold.

23

You solemnly swear or affirm that any testimony

24

you give in this case will be the truth, the whole truth, and

04:20

25

nothing but the truth, so help you God?

04:20 1 THE WITNESS: I do.

2 THE COURT: Please have a seat.

3 Let me ask, does the air conditioning that's
4 dropping, is that causing you-all any problems at this point?

04:21 5 I mean, over in the jury.

6 You don't feel anything?

7 A JUROR: I'm hot.

8 MR. BUZBEE: I think they're hot.

9 THE COURT: Okay. I'll turn the heat on, see if we
04:21 10 can feel something.

11 No. If it is a little bit warm, we've already
12 spoken to the folks. One of the things this is -- just as an
13 aside here, one of the things that obviously happened here in
14 Galveston when we had that nameless hurricane come through here
04:21 15 is we took a lot of water in the basement. It just wrecked our
16 air conditioning system.

17 So, if you see our air conditioning on the truck
18 around there, it's not going anywhere; but it might not be
19 doing a lot. But we're doing the best we can.

04:21 20 All right. Let's proceed.

21 **PAULA JOWELL, DULY SWORN, TESTIFIED:**

22 **DIRECT EXAMINATION**

23 BY MR. BUZBEE:

24 Q. Ms. Jowell, I just met you in the hallway. Could you
04:21 25 introduce yourself?

04:21

1 Am I saying your name right?

2 A. It's Paula "Jowell."

3 Q. I'm sorry. I apologize.

04:21

4 Ms. Jowell, would you introduce yourself to the
5 ladies of this jury?

6 A. My name is Paula Jowell.

7 Q. Where do you live?

8 A. Nederland, Texas.

9 Q. Okay. You have your own case. Is that true?

04:22

10 A. Yes.

11 Q. As a result of this release on April 19th of '07?

12 A. Yes.

13 Q. Okay. That's just to make sure we have full disclosure.

14 But you're not asking, obviously -- we only have
15 10 of the people who -- in this case, and you're not one of
16 them?

04:22

17 A. Right.

18 Q. You're here to tell us about what you saw, heard, felt the
19 night of April 19th of '07?

04:22

20 A. Yes.

21 Q. Who were you working for on that date?

22 A. P2S.

23 Q. What is that?

24 A. Performance -- I just know P2S.

04:22

25 Q. That's an acronym. What do they do? Let's try that.

0 4 : 2 2 1 A. I'm a laborer. I sweep and pick trash up, tools, things
2 like that, that are around on the ground, to make sure
3 everything is safe.

4 Q. Okay. How long had you worked for P2S?

0 4 : 2 2 5 A. Since February.

6 Q. So, this happened in April. So, two or three months?

7 A. Yes.

8 Q. And you were working where?

9 A. At the time?

0 4 : 2 3 10 Q. Yes, ma'am.

11 A. I was working on the south side of the -- the big hole
12 that -- I don't know, you know. Really, we worked the whole
13 area, because we go around that whole unit.

14 Q. Okay.

0 4 : 2 3 15 A. And we'd pick all the trash up, and then we come back and
16 we'd start doing all of our cleanup and sweeping.

17 Q. I see.

18 A. But at the time of that, we were in the Pipestill B3.

19 Q. Okay.

0 4 : 2 3 20 A. And I was -- they had the big hole that's, you know --
21 where the buses pick us up.

22 Q. Right.

23 A. On the opposite side of the hole, on the south side, we
24 were in that area.

0 4 : 2 3 25 Q. Okay. Before -- before you were in here, Ms. Jowell, I

0 4 : 2 3 1 showed the ladies of the jury this diagram of the BP plant.

2 You've seen a diagram like that before?

3 A. Yes.

4 Q. And I circled what says "PS 3B." Is that the area --

0 4 : 2 3 5 A. That's it, yeah.

6 Q. Okay. And you said you were on the south side of that
7 unit?

8 A. Of the hole, yeah.

9 Q. The hole. Okay.

0 4 : 2 4 10 A. Around that area. We've been everywhere already that --

11 Q. In that unit?

12 A. In that unit, yes.

13 Q. Okay.

14 A. But at the time when all this happened --

0 4 : 2 4 15 Q. Right.

16 A. -- we were on the opposite side, you know, somewheres
17 around, like -- about -- see where the wall is? And the hole
18 was about right here, the big giant hole.

19 Q. All right. And you said the south side of Pipestill 3B?

0 4 : 2 4 20 A. Yes.

21 Q. And I think, if this is correct, north is pointing straight
22 up. So, that would be this side, basically?

23 A. Yes. Uh-huh.

24 Q. "Yes"?

0 4 : 2 4 25 A. I think so, yes.

04:24 1 Q. How big is Pipestill 3B, for those of us who never been in
2 it? Just ballpark it if you could.

3 A. How big is it?

4 Q. Yeah. This lawyer kept saying that it was about a city
04:24 5 block in size. Is that about right or not?

6 A. Yeah.

7 Q. Okay. So, about a city block?

8 A. Yeah. A little bit bigger maybe.

9 Q. Okay. Now, so, you were basically a laborer picking up
04:24 10 trash?

11 A. Sweeping, yeah.

12 Q. Sweeping, that kind of stuff. Tell me what happened that
13 night.

14 A. Well, we were cleaning up. And I started to smell
04:25 15 something and so did the lady that I was working with.

16 Q. Okay.

17 A. And I told her, I said -- you know, because the night
18 before, I had got in it also but -- and I said, you know, I --
19 when we were together that night, too, on the 18th.

04:25 20 So, I said, "Maria, I'm starting to feel sick
21 again, you know; and I'm getting that taste in my mouth."

22 She said, "Me, too. Let's go outside and go to
23 the restroom and take a break so -- and get some fresh air."

24 So, we walked -- when we started to walk out of
04:25 25 the unit, people were just everywhere. They were -- you know,

0 4 : 2 5 1 we didn't even -- you know, just sick everywhere, laying
2 everywhere, you know. People were being sick, and there were
3 some of them throwing up. I mean, it was just scary. We knew
4 something happened.

0 4 : 2 5 5 We went to the restroom. We come out. Our
6 foreman started coming and gathering us all up, telling us to
7 stay right there. Never heard the horn go off or anything like
8 that.

9 Q. What is -- what do you mean? When you say "horn," what are
0 4 : 2 6 10 you talking about?

11 A. The --

12 Q. Alarm?

13 A. -- alarm, yeah, never heard that go off.

14 Q. Never heard that go --

0 4 : 2 6 15 A. Uh-uh, no.

16 Q. And when you say, "go outside to get some fresh air," you
17 mean outside Pipestill 3B?

18 A. Right. That's where our restrooms are --

19 Q. Okay.

0 4 : 2 6 20 A. -- and everything are and our water. So, we was going out
21 to maybe get some fresh air and, you know --

22 Q. Now, did you -- we're going to focus on the night before;
23 but had you smelt that kind of smell before, other than the
24 night before?

0 4 : 2 6 25 A. No.

04:26 1 Q. Could you, for those of us that haven't smelt it -- and we
2 may all get to smell it during this trial -- but could you
3 describe it to the ladies of the jury?

4 A. You know, the first night it was so -- really, really
04:26 5 strong that night. And, then, the next day, it wasn't as
6 strong. But I can't really -- I can't really tell you
7 exactly -- I mean, I can't sit here and tell you it was sweet
8 or -- you know, you smell this odor and you just want to get
9 out of it.

04:27 10 Q. Okay. Offensive, very offensive?

11 A. I -- yes, a very bad smell.

12 Q. Okay.

13 A. Yes.

14 Q. Now, what did it do to your body?

04:27 15 And I'm not talking about a doctor's opinion, but
16 just give me what it was doing to you.

17 A. The first night or the second night?

18 Q. Let's talk about the night of April 19th.

19 A. Okay. It -- you got this metal taste in your mouth. You
04:27 20 started getting -- your body started trembling inside. You
21 couldn't really breathe that good, and you got -- it's like
22 something was happening to your vision. Okay? You know, and
23 you got a real -- like your throat got real raw.

24 Q. Okay.

04:27 25 A. That's how you feel. You feel just real -- you know, real

04:27

1 jittery, nauseous.

2 Q. Okay. All right. When you -- you said you and your
3 coworker, the supervisor got involved. What happened then?

4 A. Well, she got all -- you know, she has to get all the
04:27 5 laborers together. And everybody kind of from the whole --
6 whoever else was in the unit or whatever, they were getting
7 them out. We were all kind of getting all together. And then
8 we went to the muster point. We went there.

9 Q. Okay.

04:28

10 A. We stayed there for awhile. We had told our foreman that
11 we had been in it and we were feeling kind of sick, and we got
12 loaded on the buses. She said, "Wait. When we get there,
13 there are going to be medical people there to look at all of
14 us," you know.

04:28

15 Q. Okay.

16 A. From there, we went to the tents; and they -- they looked
17 at us and took care of us.

18 Q. What did they do?

19 A. They took our blood pressure and all that, you know, and
04:28 20 just kind of watched us and asked us how we felt.

21 Q. Did anybody give you a breathing test?

22 A. No.

23 Q. Okay. Did anybody do an x-ray?

24 A. No.

04:28

25 Q. Okay. They looked at your throat, they looked at your

04:28 1 eyes; did they do any of that?

2 A. Uh-uh.

3 Q. "No"?

4 A. No.

04:28 5 Q. Well, did they do anything?

6 A. They just gave, you know, checked our blood pressure, just
7 asked us how we felt, "Are you sick?" "Drink some water."
8 That's -- that's it.

9 I mean, even when we went to the hospital they
04:29 10 just made us -- they made us strip down and -- which was
11 humiliating. We had to strip down. They took our clothes.
12 They put us in a room with men and women, all of us together;
13 and they just basically monitored our blood pressure. They
14 didn't want to take urine. They didn't want to do anything,
04:29 15 take blood, do anything to check us out or anything.

16 Q. Which hospital were you at?

17 A. At Mainland.

18 Q. In Texas City?

19 A. Yeah, Mainland Medical.

04:29 20 Q. So, they decontaminated you?

21 A. That was it, yeah.

22 Q. And they didn't segregate the women from the men?

23 A. No. And it was basically to -- put you into tears. It was
24 very, very humiliating, yes. I mean, even the men and these --
04:29 25 there were some of them, you know, large men, they were in

04:29 1 their little gowns, you know.

2 Here we are, all in gowns; and we're having to
3 stay in there with these men. And we don't -- you know, I just
4 thought it was awful. It was just an awful experience.

04:30 5 Q. Were you concerned about your health?

6 A. Yes, I was, because I have had breast cancer. Okay? And I
7 just -- I was scared. I was really scared.

8 Q. How long, Ms. Jowell, were you at the hospital, Mainland
9 Medical?

04:30 10 A. They kept us there for about three hours and just watched
11 us. And our blood pressures got down, they sent us home and
12 said that, you know, go see a doctor when -- they'll get us all
13 together and see their doctor.

14 Q. Did that ever happen?

04:30 15 A. Yes, we did -- they did -- they drug tested us. That's
16 about it.

17 Q. So, BP at some point sent you to one of their doctors?

18 A. I guess that's who --

19 MR. GALBRAITH: Excuse me, your Honor.

04:30 20 MR. BUZBEE: Hold up, Ms. Jowell.

21 MR. GALBRAITH: That assumes facts not in evidence.

22 MR. BUZBEE: She's putting it in evidence.

23 THE COURT: I think he asked a fair question, and I'm
24 going to overrule the objection.

04:30 25 MR. GALBRAITH: Thank you.

04:30 1 BY MR. BUZBEE:

2 Q. Go ahead, Ms. Jowell. I'm sorry for the interruption.

3 Did BP ever provide a doctor for you?

04:31 4 A. I think it was -- they sent all of us to a doctor. I
5 didn't know if it was P2S or -- or BP. All of us went; and we
6 all just took a drug test, basically. They took a drug test
7 and asked us questions, and that was it.

8 Q. So, there was no BP there making sure you had an x-ray or
9 breathing test or anything like that?

04:31 10 A. No.

11 Q. Was there any BP people there, even at the doctor, to make
12 sure you were okay?

13 A. No. Now, they sent us -- after we went to the doctor, they
14 sent us to a clinic. And we were going to a clinic, and they
04:31 15 did do --

16 Q. Are you talking about the clinic I sent you to?

17 A. Yeah, that's it, you did. See, I'm --

18 Q. I understand. I just want to be clear.

19 A. I did have that there.

04:31 20 Q. And the only reason I ask this, Ms. Jowell -- and I think
21 everybody here knows why -- is because there's been some
22 reference that BP had you x-rayed and all that. That's flat
23 out false?

24 A. Right.

04:32 25 Q. Okay. Now, did you go back to work that night?

04:32

1 A. No.

2 Q. Okay. When did you go back to work? Or did you go back to
3 work?

4 A. I did go back to work. I think when we all were supposed

04:32

5 to go back in, I went back in for a day, I think. And the next
6 day, I went home --

7 Q. Okay. Explain --

8 A. -- because I was still -- I was sick.

9 Q. Okay.

04:32

10 A. I just felt really sick.

11 Q. Okay.

12 A. And I did have a few problems. You know, I was going to
13 the doctor and --

14 Q. Right.

04:32

15 A. -- you know, it was just making me feel sick.

16 Q. Did you ever go back to work out there?

17 A. Yes, I did.

18 Q. When?

19 A. I kept working till June, I think.

04:32

20 But, you know, after all -- for a couple of weeks
21 there, I was missing a little bit, going -- staying home, yeah.

22 Q. I see. Okay.

23 A. But then I just went back, yeah.

24 Q. Well, first off, let's just figure this out. Did BP

04:32

25 ever -- anyone from BP ever identify to you what you had been

04:33 1 exposed to?

2 A. Never.

3 Q. Okay. Let's go back the night before. You talked about
4 there was a smell the night before. Could you describe that
04:33 5 smell?

6 A. It was very strong.

7 Q. Where were you when you smelt it?

8 A. Basically around that same place. Because, you know, we
9 were going in that part -- we went into the north side, in
04:33 10 through there into the unit to take the garbage out, you know,
11 and -- because -- yeah. And it -- the smell was so strong and
12 me and my friend, the lady that I was working for -- working
13 with, we were so -- the smell was so strong we basically had to
14 run out of there.

04:33 15 That -- the smell that was -- and when we got
16 out, we were -- I was shaking. I mean, I've never had -- I've
17 never worked in a plant before, and I've never had that feel --
18 I really thought that -- I didn't know if I was going to die.
19 I mean, I didn't know what I just got into, you know.

04:33 20 Q. When you say you walked into there, what did you walk into?

21 A. We walked into the pipestill.

22 Q. Oh, okay.

23 A. Because we were on the main road, and you go in -- we take
24 our wheelbarrow and go in there.

04:34 25 Q. I see.

0 4 : 3 4 1 A. We went to take the garbage, empty the barrels. And the
2 smell was so strong; and I was, like, "Do you smell that?"

3 And she said, "Let's get out of here." And we
4 came out, and we went straight -- I started feeling so bad that
0 4 : 3 4 5 I almost wanted to throw up. We went straight to the foreman.
6 And then another foreman had come out of there, too. He was
7 sick.

8 So, it was me and another foreman and three other
9 men, we -- all five of us went to the nurses station. And they
0 4 : 3 4 10 monitored us, made us stay there for about three hours, and
11 told us to just keep drinking water and it would go away.

12 Q. Did anybody ever identify that to you?

13 A. No.

14 Q. Were you ever questioned or an investigation done from BP
0 4 : 3 4 15 about that?

16 A. No.

17 Q. Okay. After you finally went back to work -- I know you
18 said you worked intermittently because you were missing work --
19 did BP ever come to you or even your supervisors ever inform
0 4 : 3 5 20 you about subsequent or additional releases?

21 A. No.

22 MR. BUZBEE: I pass the witness.

23 THE COURT: All right.

24 **CROSS-EXAMINATION**

0 4 : 3 5 25 BY MR. GALBRAITH:

0 4 : 3 5 1 Q. Hello, Ms. Jowell, how are you?

2 A. Fine.

3 Q. I'm Jim Galbraith. We've never met before, right?

4 A. Yes.

0 4 : 3 5 5 Q. You're suing BP in this case, and you recognize that I'm

6 the lawyer for BP?

7 A. Yes.

8 Q. So, that puts me on the other side of the fence from you.

9 I just want to make that clear. You understand?

0 4 : 3 5 10 A. Yes.

11 Q. You indicated you worked for P2S, right?

12 A. Yes.

13 Q. When you say you took the trash out, was this inside, like,

14 in the control rooms?

0 4 : 3 5 15 A. No. Just inside the unit, you know.

16 Q. And the unit is -- the control room itself is a building.

17 You walk through a door, it's got air conditioning, it's got a

18 roof; you're inside of a room?

19 A. No, nothing like that.

0 4 : 3 5 20 Q. The control room, I'm talking about.

21 A. Right.

22 Q. But the unit is outdoors?

23 A. Right.

24 Q. Open air?

0 4 : 3 6 25 A. Right.

04:36 1 Q. Okay. So, when you say you went into the unit, you were
2 still walking down an alleyway or down a road or something like
3 that --

4 A. Yeah.

04:36 5 Q. -- inside that --

6 A. But it's so closed in, you're so -- you know, it's not like
7 you're -- it is outside, yes.

8 Q. Okay. All right. You were on the ground when you smelled,
9 correct?

04:36 10 A. Right.

11 Q. Okay. The wind, we've been led to understand that the wind
12 was from the southeast on the 19th. Does that comport with
13 your recollection?

14 A. I don't -- I don't even know -- I don't know what you -- I
04:36 15 don't know anything about no wind or -- I'm not -- I'm not good
16 at all that.

17 Q. Do you know what the wind was doing on the 18th, whether it
18 was coming from the same direction?

19 A. I have no idea.

04:36 20 Q. All right. You were wearing an H2S personal monitor
21 yourself, correct?

22 A. Yes.

23 Q. To monitor for sulfur, specifically H2S?

24 A. Yes.

04:37 25 Q. It did not alarm either time --

04:37

1 A. No.

2 Q. -- correct?

3 A. Correct.

4 Q. No sulfur was detected at either of the alarm levels,

04:37

5 correct?

6 A. Correct.

7 Q. You're trained in how to use those?

8 A. Yes.

9 Q. You understand that they have two alarm levels: a low alarm

04:37

10 and a high alarm?

11 A. I guess, yeah.

12 Q. Do you know that?

13 A. I guess, yeah.

14 Q. All right. Where do you work now?

04:37

15 A. I'm not working right now.

16 Q. Okay. How long have you worked in refineries or chemical
17 plants since then?

18 A. I haven't.

19 Q. Okay. So, the sum total of your experience in refineries
20 was a couple of months?

04:37

21 A. Yes. I mean -- from that night?

22 Q. Okay.

23 A. Yeah, I --

24 Q. Let me see --

04:37

25 A. Yeah.

04:37 1 Q. You said you were off maybe a couple of weeks because you
2 felt sick and then you went back to work at your old job?
3 A. Right.
4 Q. How long did you work then?
04:37 5 A. Till August. Well, I quit in June; and then I than went
6 back. I went back in.
7 Q. For how long? Months?
8 A. About six more weeks.
9 Q. Okay. Ever smell anything like that again?
04:38 10 A. Uh-uh.
11 Q. Refineries are capable of producing some smell, right?
12 A. Yes.
13 Q. But this was different?
14 A. Totally different.
04:38 15 Q. Not like anything that comes from a refinery?
16 A. Right.
17 Q. All right. You say that -- were you taken with a number of
18 other P2S employees to the same medical facility, Mainland
19 Medical Center Hospital emergency room?
04:38 20 A. Yes.
21 Q. Okay.
22 A. No. Yes. Yes. All of us went to different hospitals.
23 Some of us went to Mainland, some of us went to somewheres
24 else.
04:38 25 Q. Did your P2S coworkers all go together to Mainland Center

0 4 : 3 8 1 Hospital?

2 A. What do you mean?

3 Q. Well --

4 A. The lady that I was working with?

0 4 : 3 8 5 Q. Okay. Let's start there.

6 A. No. She would not go.

7 Q. Okay. She didn't go to get checked out?

8 A. Uh-uh.

9 Q. She said, "I don't need medical checkout"?

0 4 : 3 9 10 A. She wouldn't do it. She did feel sick. She told her

11 supervisor, but she still did not go.

12 Q. Okay. I'm going to ask you one thing about the night

13 before, when you say you smelled something. It was stronger

14 than April 19th?

0 4 : 3 9 15 A. Yes, it was.

16 Q. Okay. And on April 19th you were on the south side of the

17 unit, correct?

18 A. We walked in from the north, through -- to the --

19 Q. To the far side, to the south side?

0 4 : 3 9 20 A. Yes.

21 Q. Okay. If you're on the south edge of the Pipestill 3B Unit

22 and the wind is coming from the south, did -- would it appear

23 to you that, whatever was the source or the origin of the

24 smell, it wasn't from the unit, correct?

0 4 : 3 9 25 A. I have no idea.

04:39 1 Q. Okay.

2 A. It's got just -- you know, when you go in it, it's got so
3 many different, you know, blocks, you know, different things
4 everywhere that, you know, it holds heat and everything inside
04:39 5 there because it -- you know, it's all closed in, kind of.

6 Q. Did P2S take care of your medical bills? Have you ever
7 been presented with any of those medical bills?

8 A. I've sent -- I've been billed, yes.

9 Q. Did you ship them in -- for the Mainland Center Hospital
04:40 10 checkup?

11 A. For the Mainland, yeah.

12 Q. Okay. They billed you?

13 A. They billed me.

14 Q. Okay. Was this something that you reported to your
04:40 15 employer as an on-the-job injury?

16 A. Yes, we mentioned it.

17 Q. Okay. Your supervisors direct you to Mainland Center?

18 A. What do you mean?

19 Q. Well, what was the involvement of P2S?

04:40 20 A. The involvement of? I don't understand your question.

21 Q. Okay. I guess I'm talking about -- I'm asking about your
22 training, and I'm asking about how it was implemented that
23 night.

24 P2S had policies and procedures for what happens
04:40 25 when you smell something unusual, not like a refinery, on the

04:40

1 job, have symptoms, correct?

2 A. Right.

3 Q. And you're supposed to report it to P2S?

4 A. Right.

04:40

5 Q. And then take instruction from P2S, follow their orders.

6 Is that right?

7 A. Right. Right.

8 Q. And -- okay. And, so, what was -- who was it at P2S that
9 instructed you or directed you or took charge?

04:41

10 A. My supervisor.

11 Q. Who's that?

12 A. Irene -- Irene Fernandez.

13 Q. Okay. And there was an Alfredo, as well?

14 A. That was -- that was just a foreman that worked there. He

04:41

15 did not -- you know, he wasn't my foreman. He was just someone
16 there that came out of the unit. I was already out of the
17 unit, and my supervisor was trying to get me some medical help
18 when he came out. And he was sick also and said the smell was
19 in there.

04:41

20 Q. Okay. When -- when you talked about the decontamination
21 procedure, that was a procedure of Mainland Center Hospital,
22 right?

23 A. I don't -- that, I don't know. I guess so.

24 Q. Well, I mean, you weren't asked to participate in any

04:41

25 decontamination procedure until you got to Mainland Center,

0 4 : 4 2 1 right?

2 A. Well, there was -- one of the ladies that works with us,
3 she was in it -- in the worst part of the areas, and they
4 stripped her -- she's a big woman. They stripped her down and
0 4 : 4 2 5 sprayed her down in front of everybody on the job site. And
6 she was very, very humiliated over that.

7 Q. Okay. You say that they put you in a room with ladies and
8 men. Weren't -- you said they stripped you down and put you in
9 a room with ladies and men together?

0 4 : 4 2 10 A. Right. They gave us gowns to put on; but still, a gown, a
11 hospital gown --

12 Q. They're nasty, I agree. Everybody will agree.

13 A. Right.

14 Q. But it wasn't naked. It was in a hospital gown.

0 4 : 4 2 15 A. Well, you didn't have nothing on underneath; and everybody
16 is sitting around. It wasn't very comfortable.

17 Q. Okay. When you reported it the night before, did -- did
18 anybody report it to BP --

19 A. Yes.

0 4 : 4 2 20 Q. -- to your knowledge?

21 A. Yes.

22 Q. Okay. Who did you report it to?

23 A. First thing we did was go to my supervisor.

24 Q. Okay. And then he takes it from there or do you follow it
0 4 : 4 3 25 from there?

04:43

1 A. They take it from there.

2 Q. Okay. Were you evacuated that night before, for an
3 investigation?

4 A. Yeah. We didn't go back in the unit for awhile.

04:43

5 Q. Okay. While tests were being run or machines were being
6 utilized?

7 A. I guess while they were checking it out.

8 Q. Do you know what the "checking it out" investigation
9 amounted to?

04:43

10 A. No.

11 Q. You know they checked it out with some kind of machines;
12 you don't know what?

13 A. I have no idea.

14 Q. Okay. Who was it that said drink water and it would go
15 away?

04:43

16 A. The nurses station, whoever works in the nurses station.

17 Q. Okay. So, was that an emergency medical technician?

18 A. Yeah.

19 Q. Or a paramedic?

04:43

20 A. Whoever works for BP.

21 Q. Okay. It was a BP person that was tending you before you
22 went to Mainland Center?

23 A. What, now?

24 Q. The -- was it -- okay. First of all, I guess I got to ask.

04:43

25 When somebody said, "Drink water and it should go away" --

04:44 1 okay?

2 A. It was whoever the nurse -- whoever was in the office when
3 they sent us to the nurses station, whoever works in there. I
4 don't know if it's -- if they're BP or if they're P2S.

04:44 5 Q. Or a contractor or what?

6 A. Right.

7 Q. But they're the ones said, "Drink water and it should go
8 away"?

9 A. "Just drink the water, and your symptoms will start going
04:44 10 away."

11 MR. GALBRAITH: Pass the witness, your Honor.

12 MR. BUZBEE: May I approach?

13 THE COURT: Yes.

14 **REDIRECT EXAMINATION**

04:44 15 BY MR. BUZBEE:

16 Q. Ms. Jowell, we talked about it and we talked about you
17 reported the night before and I have here in front of you
18 Plaintiffs' Exhibit 38A, which is what is called a "Traction
19 Report," an actual report in BP's system.

04:44 20 Did you -- can you confirm to me, ma'am, that
21 here it says, "Employee experienced nausea after smelling odor
22 in furnace area"?

23 Were you in the furnace area when you reported
24 this?

04:45 25 A. It could have been. I just -- you know, I'm not really --

0 4 : 4 5 1 you know, I haven't -- like I said, I've never worked in a
2 plant --

3 Q. Okay.

4 A. -- and I don't really know all the things of all that
0 4 : 4 5 5 stuff.

6 Q. But it has here the identification of who the person who
7 made the report was working for. And it says who?

8 A. "P2S."

9 Q. Okay. And this happened about what time?

0 4 : 4 5 10 A. Between 9:00 and 10:00.

11 Q. Okay. And this report, looks like, was done about
12 3:00 a.m. Does that look right?

13 A. Right.

14 Is this the 18th or 19th?

0 4 : 4 5 15 Q. This is the night before the event we're here to talk about
16 in this case. This is actual -- just so you know, this is your
17 report.

18 A. This is the 19th or the 18th?

19 Q. Well, remember, you were working the graveyard shift?

0 4 : 4 5 20 A. Right.

21 Q. So, it's kind of confusing as far as --

22 A. Yeah, it is.

23 Q. -- whether you were -- but I'm going to represent to you,
24 since I am your lawyer --

0 4 : 4 5 25 A. Right.

04:45

1 Q. -- that this is the report that was made.

2 A. Okay.

3 Q. Would you agree with me that it was done on the 19th at
4 about 3:00 a.m.?

04:46

5 A. Yes.

6 Q. That's when the report was made?

7 A. Right.

8 Q. And it has to do with a P2S employee --

9 A. Right.

04:46

10 Q. -- being overcome with a smell, right?

11 A. Right.

12 MR. BUZBEE: Your Honor, we offer Plaintiffs' Exhibit
13 38A.

14 THE COURT: Take a look at that, tell us whether
15 you --

04:46

16 MR. GALBRAITH: Have we seen this?

17 THE COURT: -- have -- sustain an objection to it?

18 MR. BUZBEE: This is the BP Traction report for the
19 incident that you just crossed this witness about.

04:46

20 MR. GALBRAITH: Pardon me, your Honor. I haven't seen
21 this.

22 MR. BUZBEE: It's a BP document.

23 THE COURT: What's the number? Thirty what?

24 MR. GALBRAITH: It's 38A. It's a new sticker.

04:46

25 THE COURT: Thirty-eight?

04:46

1

MR. BUZBEE: It was part of 38, but I made it 38A
so -- thinking there would be no objection.

2

3

THE COURT: All right. Mr. Galbraith, take a look at
it.

4

04:47

5

MR. GALBRAITH: I don't think I have any objection to
38A, your Honor.

6

7

THE COURT: Are there particular Bates numbers that
identify that particular document?

8

9

MR. BUZBEE: No, your Honor, there are not.

04:47

10

THE COURT: Okay.

11

MR. BUZBEE: But I intend to leave it here with your
case manager when we're done today.

12

13

THE COURT: And what is it called, now?

14

MR. BUZBEE: We're calling it 38A.

04:47

15

THE COURT: What is the document?

16

MR. BUZBEE: It's an incident report, a BP incident
report.

17

18

THE COURT: All right. Okay. It's admitted.

19

MR. BUZBEE: Nick, can you show me how to use this
Elmo, if you know?

04:48

20

21

BY MR. BUZBEE:

22

Q. Who is Terrell Roddy, if you know, Ms. Jowell?

23

A. I do not know.

24

Q. Okay. Do you see there that on 4-19-07 at 3:00 a.m.

04:48

25

somebody put into BP's system this incident report? Do you see

04:48 1 that?

2 A. Yes.

3 Q. All right. It says, "Three individuals got whiff of odor."

4 Would you -- if you were telling one of your
04:48 5 friends -- for instance, Maria or one of the people you were
6 talking about -- is that how you would describe what happened,
7 you got a whiff of an odor?

8 Or would you say, "I was overcome. I almost
9 passed out from an odor"?

04:48 10 A. Yes. Yes.

11 Q. Okay. I thought so. Now, you said there were about five
12 people or so involved?

13 A. Yes. There was five that I -- that I saw.

14 Q. Okay. This -- and for full disclosure, this is -- actually
04:49 15 two entries were made in 38A, three people in one entry and
16 then it has a second entry at the same time period.

17 And I think this is probably the one that refers
18 to you. It says, "Employee experienced nausea after smelling
19 odor in furnace area."

04:49 20 I thought you told me that there -- that your
21 coworker also experienced nausea that night --

22 A. Yes, she did.

23 Q. -- that she was also overcome and became sick.

24 A. Yes.

04:49 25 Q. She also almost felt like she was going to pass out?

04:49

1 A. Yes.

2 Q. But, for some reason, the actual report that was done, I
3 guess either references just you or just Maria, from this
4 document, doesn't it?

04:49

5 A. It's -- right.

6 Q. Is it true that Maria or you -- because we're talking about
7 you and Maria in this report, you know --

8 A. Right.

9 Q. -- had no reaction to the odor. Is that true?

04:49

10 A. No.

11 Q. That's a false report, is it not?

12 A. Right.

13 Q. Okay. But it is true that the operations moved everyone
14 out of the unit?

04:50

15 A. Yes.

16 Q. Okay. And they, of course, could not find the cause?

17 A. Right.

18 Q. And no one ever told you what it was that you were exposed
19 to?

04:50

20 A. No.

21 Q. Either 24 hours before or the actual April 19th, where
22 everybody went to the hospital?

23 A. Right.

24 Q. And nobody from BP came to you and said, "Let me question
25 you. Let me try to figure this out. Let me" --

04:50

04:50 1 What was the phrase he used? "We didn't stop
2 there. We didn't stop there. Let's sit you down and try to
3 figure out what happened," no one did that from BP, did they?

4 A. No.

04:50 5 Q. You told the lawyer for BP that you wear a badge?

6 A. A little monitor, yes.

7 Q. Okay. What -- what kind of badge is that? Or monitor,
8 what kind of monitor?

9 MR. GALBRAITH: Judge, it's not a badge. It's a
04:50 10 monitor. There's a difference. She understands the
11 difference. She's answered that it was a monitor, not a badge.

12 THE COURT: All right.

13 BY MR. BUZBEE:

14 Q. Okay. I'm sorry. I don't -- we're going to figure this
04:51 15 out as we go. But you wore a monitor?

16 A. Right.

17 Q. What kind of monitor was it? A hydrogen sulfide monitor?

18 A. Right.

19 Q. It's not a carbon disulfide monitor, is it?

04:51 20 A. No.

21 Q. Okay. And, finally, there's been some talk about the wind.
22 Do you remember the wind blowing real hard that night, the
23 night that everybody was evacuated?

24 A. I don't.

04:51 25 Q. If the wind had been blowing or gusting, would you have

04:51 1 remembered it?

2 A. Probably.

3 Q. Okay. And I think you tried to say several times --
4 because none of us have actually been out there except for you.

04:51 5 I guess the BP lawyer has, but I haven't.

6 But you kept saying it's a closed in space. Help
7 me understand what you mean by that.

8 A. Well, I mean, it's, like, tall pieces that -- you know,
9 steel and just different -- you know, just different pieces of
04:51 10 the unit that's -- some of it is tall, some of it is not as
11 tall, like going in downtown, like, in a real --

12 Q. Oh, okay.

13 A. You know what I --

14 Q. Yes, I understand.

04:52 15 A. I mean, the wind don't really go through there, gusting,
16 you know.

17 Q. Right. Okay. It's not like being out on a football field
18 where something --

19 A. Right.

04:52 20 Q. -- could release over here and it blows over and you smell
21 it?

22 A. Right.

23 Q. It's like you're in a confined space.

24 A. Right.

04:52 25 MR. BUZBEE: Pass the witness.

0 4 : 5 2 1 THE COURT: You may step down. Thank you very much.

2 MR. BUZBEE: Thank you, Ms. Jowell.

3 THE COURT: Tell you what. Why don't we break?

4 I keep looking outside, see what time darkness
0 4 : 5 2 5 falls. It's not going to be dark for awhile, but I do want you
6 to get a chance to get on the road. So, why don't we break at
7 this point and pick up in the morning?

8 Is 8:30 a problem for anybody? I generally get
9 up early. Do you want to start earlier than that?

0 4 : 5 2 10 MR. BUZBEE: Yes? No?

11 THE COURT: I knew I would get some yes's and some
12 no's with that, and that's why I asked the question. We'll
13 keep it at 8:30. Okay?

14 MR. BUZBEE: Yes, sir.

0 4 : 5 2 15 THE COURT: You-all have a good evening. See you in
16 the morning. And be careful out there.

17 THE CASE MANAGER: All rise.

18 *(Jury not present)*

19 THE COURT: All right. Please be seated. I just need
0 4 : 5 4 20 to verify before you leave that there -- that we're -- we don't
21 have anything we need to take up before we get started -- or
22 before we dismiss, should I say, this afternoon.

23 MR. BUZBEE: May I be heard, your Honor?

24 THE COURT: Yes.

0 4 : 5 4 25 MR. BUZBEE: One thing we haven't resolved is the

0 4 : 5 4 1 deposition designation objection.

2 THE COURT: That came back to me when you called this
3 witness, and I know we need to talk about that.

4 MR. BUZBEE: And I -- just for the Court's
0 4 : 5 4 5 understanding or -- what's going to happen tomorrow, I do
6 intend to call Michael Yancy.

7 THE COURT: Well, here's the thing that I'm concerned
8 about.

9 MR. BUZBEE: Yes, sir.

0 4 : 5 4 10 THE COURT: One of the -- I was prepared to sustain
11 your objections to the deposition excerpts because I was of the
12 opinion that it might not be proper to call the other
13 witnesses -- I mean, the other plaintiffs as witnesses in this
14 case. I'm really concerned about that because what we're
0 4 : 5 5 15 actually doing -- and I'm not saying that it shouldn't be done.
16 My -- just my thinking, limited, narrow thinking was that --
17 was that we were going to try this case based upon the
18 testimony of these witnesses and determine whether or not these
19 witnesses' case would be sustained.

0 4 : 5 5 20 Now, I don't know how many other witnesses that
21 you plan to call. Maybe we need to talk about that. How many
22 do you plan to call who -- in this case, who are also
23 plaintiffs in this case?

24 MR. BUZBEE: I have --

0 4 : 5 5 25 THE COURT: If you know that at this time.

04:55 1 MR. BUZBEE: I do know it, and I had intended to
2 call --

3 THE COURT: Hold on just one second. Let me see if I
4 can find my list.

04:55 5 MR. BUZBEE: -- looks like five others, sir.

6 THE COURT: Okay. And I'll be -- are any of these
7 witnesses that you plan to call, are they persons whose
8 depositions have been taken for which excerpts --

9 MR. BUZBEE: No.

04:56 10 THE COURT: Okay. All right. Now --

11 MR. BUZBEE: Michael Yancy, the one I was referring to
12 as -- he was the team leader of the investigation. We have a
13 cut of about 58 minutes or so, and I was just giving you a
14 heads up. So, if we want to resolve that tomorrow morning
04:56 15 early, before we play it, my guy can make the cuts on the fly.

16 THE COURT: What's your objection to his offer?
17 Because I think you have some objections to the defendant's
18 offer of certain other plaintiffs' -- other plaintiffs'
19 testimony excerpts?

04:56 20 MR. GALBRAITH: Well, I don't know my --

21 THE COURT: No, no. I thought the plaintiffs had
22 objections to some of your offers.

23 MR. GALBRAITH: In the deposition of --

24 THE COURT: Yeah, deposition of certain others.

04:56 25 Did you --

0 4 : 5 6 1 MR. BUZBEE: No. We -- our plaintiffs in this case,
2 they -- I don't know why they designated our plaintiffs in this
3 case. Not the other hundred and so, but the 10. That's what
4 our objection --

0 4 : 5 6 5 THE COURT: Okay. So, the objection that you made
6 goes to the 10 plaintiffs or some part of them --

7 MR. BUZBEE: Right.

8 THE COURT: -- that are in this case --

9 MR. BUZBEE: Correct.

0 4 : 5 7 10 THE COURT: -- and the designation?

11 MR. BUZBEE: Yes, sir.

12 THE COURT: Well, that's easy. We're not -- certainly
13 not going to offer their depositions.

14 MR. BUZBEE: No.

0 4 : 5 7 15 THE COURT: It might be that they might be used for
16 impeachment purposes; but beyond that --

17 MR. BUZBEE: Yes, sir.

18 THE COURT: Now, let's go ahead with your concerns.

19 MR. GALBRAITH: Okay. Deposition objections was on my
0 4 : 5 7 20 list. There's a couple of things. There's a long list of
21 potential witnesses, a long list.

22 THE COURT: Right. Right.

23 MR. GALBRAITH: I promised to give 24 hours' notice of
24 who I'm going to call. If I could demand something similar,
0 4 : 5 7 25 because it's just not fair to have two witnesses I never

0 4 : 5 7 1 anticipated, never had reason to anticipate, and I've already
2 cross examined them. I think I would ask for some kind of
3 accommodation. I don't think it's unfair or unreasonable. And
4 I promise to do a quid pro quo.

0 4 : 5 7 5 THE COURT: Okay.

6 MR. BUZBEE: We can work that out. I have no problem
7 with that.

8 THE COURT: You going to work it out today?

9 MR. BUZBEE: We're going to work it out when we leave
0 4 : 5 7 10 here.

11 THE COURT: Okay.

12 MR. BUZBEE: We will work -- we're not going to bother
13 you with that, your Honor. We're going to reach an agreement.
14 There will be no problem.

0 4 : 5 7 15 THE COURT: Thank you. Okay.

16 MR. GALBRAITH: The second thing, other than the
17 deposition exhibits, is the outstanding subpoenas, however --
18 or whoever they may be. My --

19 THE COURT: Well, we know three. We only have one
0 4 : 5 8 20 outstanding subpoena, because two have responded.

21 MR. GALBRAITH: Right. And I know -- I know that
22 there were efforts to serve that third one today or this
23 afternoon. I'm not sure if --

24 THE COURT: Is he on your list?

0 4 : 5 8 25 MR. GALBRAITH: Keith Casey is not.

04:58

1 THE COURT: He's not on anybody's list?

2 MR. GALBRAITH: No.

3 MR. BUZBEE: Your Honor, I'm sorry. That's not
4 factual.

04:58

5 MR. GALBRAITH: Well --

6 MR. BUZBEE: He's been listed on their witness list
7 until very recently they took him off. He's the plant manager,
8 been around forever, been listed as a person with knowledge,
9 been listed on their witness list for a long time. He's
10 obviously a key witness in the case.

04:58

11 THE COURT: Okay. All right. And who are the others,
12 then, who you think --

13 MR. GALBRAITH: Well, I don't know. That's the only
14 one that I know about. That's the only other one that I know
15 about.

04:58

16 MR. BUZBEE: There's three only. It's the ones that I
17 told you about, your Honor: Keith Casey and the two men that
18 you just swore in --

19 THE COURT: Those are the only three subpoenas that
20 were issued?

04:58

21 MR. BUZBEE: That's it, correct.

22 THE COURT: Okay. So, that covers that.

23 MR. GALBRAITH: Keith Casey is an apex deposition. Of
24 course, he was not --

04:58

25 THE COURT: He is an apex deposition, meaning his

04:59 1 deposition was taken?

2 MR. BUZBEE: No.

3 MR. GALBRAITH: No, no. He has not been deposed. And
4 he has been a subject of a motion to quash his deposition.

04:59 5 They attempted to get his deposition. And you
6 may remember that we talked about I don't even know if he was
7 on duty that night or if he was even in the plant that night.
8 And we had to go back and find out that he was not. He was not
9 in the State of Texas that night.

04:59 10 And we confirmed that, which was the Court's
11 inquiry as to whether or not we were going to do this apex
12 deposition or not. We confirmed that and reiterated it to you;
13 and they withdrew their deposition notice and rendered the
14 matter moot, I think, based upon the guidance from the Court.

04:59 15 Now they've subpoenaed him. So, it brings back
16 the same issue. We've been through this before. He was not at
17 the plant; he was not on duty; he was not even in the state
18 that night; he is an apex.

04:59 19 For apex depositions, there should be some -- he
20 is -- I'm not going to say he's a very busy man, although he is
21 a tremendously busy man. But I think that, at minimum, we
22 should beg for some accommodation. But that's not the answer
23 to this.

05:00 24 The answer is that there should be some required
25 showing that you have to get from him something you can't get

05:00 1 elsewhere. And, of course, I don't think they can ever do
2 that. I don't think that can be done because obviously -- I
3 think it's to harass. I think it's to get the head guy just
4 because he's the head guy, not because he knows some fact that
05:00 5 nobody else knows, because he doesn't.

6 THE COURT: All right.

7 MR. BUZBEE: Your Honor, first off, I -- just to clear
8 up probably unintentional misrepresentations, but this is their
9 witness list and Keith Casey's name is on it, even now, number
05:00 10 one. That's their witness list, still on it.

11 Number two, as you can -- first off, I don't
12 harass anybody. I think you realize that, your Honor. Keith
13 Casey is the plant manager. Keith Casey is the decision-maker
14 about maintenance, piping integrity, and inspections. Keith
05:00 15 Casey is the guy that decides how much money will be spent here
16 and there, how much they're going to put in for this --

17 THE COURT: Was it a 30 -- what is it -- a 30(b)(6)?
18 Was there a corporate deposition taken in this matter?

19 MR. BUZBEE: Nope.

05:01 20 MR. GALBRAITH: No, your Honor.

21 MR. BUZBEE: No, your Honor.

22 THE COURT: Except for the designations that are being
23 made here, there's no, quote, "responsible person" who claims
24 to be in charge of everything?

05:01 25 MR. BUZBEE: Right. He's the guy.

05:01 1 And moreover, just, again, to correct -- and I
2 know the Court knew this already -- but "apex deposition,"
3 that's a state court thing. That's not a federal court thing.

4 THE COURT: Right.

05:01 5 MR. BUZBEE: This guy is the plant manager. He's the
6 head man, the buck stops here; and he's the guy that I am
7 entitled to ask about how much you spend on maintenance, are
8 you aware of the leaks.

9 And, remember, this is a punitive case, too. So,
05:01 10 I'm -- I don't think they have any cases that support their
11 position. I'm entitled to --

12 THE COURT: Well, let me say this. Whatever the
13 circumstances were that gave rise to the cancellation of the
14 deposition, I'm not going to say or rule that that ended the
05:01 15 possibility of that person being called as a witness, because
16 that simply would give lawyers in different circumstances too
17 many opportunities to hide witnesses and then not be able to
18 get them to court later on. That's not the case here, of
19 course.

05:02 20 But what I will say is this. If he's on a
21 witness list, been on a witness list, you're responsible for
22 him if he's on your witness list.

23 All I can say is this. Work it out with counsel
24 as to when he needs him. And then I'll let you make whatever
05:02 25 objections you think are appropriate at the beginning. I

05:02 1 prefer that they be made before the jury is in the box. And,
2 then, if you have objections specifically to questions, those
3 certainly you have to make during the course of the testimony.

05:02 4 MR. GALBRAITH: Well, I don't think it's a
5 misrepresentation intentionally either. He is on our witness
6 list, but that was called to our attention by them, saying, "If
7 he's on your witness list, we want his deposition."

05:02 8 And we wrote a letter saying, "We have no
9 intention of calling him. And if we ever change that, we'll
10 give you plenty of notice and opportunity to depose him" --

05:03 11 THE COURT: Well, but I can't let your decision
12 determine whether or not he is an appropriate witness or not at
13 this point in time. I think without regard to how this could
14 have been handled or historically was handled, I think the
15 appropriate thing to do is to simply determine when you need
16 the witness and then the objection can be made at -- before as
17 to him being permitted -- or the Court's permitting him to be
18 called as a witness; and then there can be, certainly, your
19 usual objections or -- I say "usual" -- the evidentiary
05:03 20 objections during the course of the testimony itself.

21 MR. BUZBEE: Yes, sir.

22 MR. GALBRAITH: Yes, sir.

23 THE COURT: All right. Thank you, gentlemen. You-all
24 have a good evening. We'll see you tomorrow morning at 8:30.

05:03 25 MR. BROWN: Your Honor?

05:03

1 THE COURT: Yes, sir.

2 MR. BROWN: There is one issue. They mentioned they
3 want to call --

4 THE COURT: State your name for the record.

05:03

5 MR. BROWN: I'm sorry. Tony Brown.

6 THE COURT: Go ahead.

7 MR. BROWN: I identified myself earlier.

8 THE COURT: Yes.

05:03

9 MR. BROWN: We have a deposition they intend to play
10 tomorrow, of Mr. Michael Yancy. It was mentioned a few minutes
11 ago. Plaintiffs made designations. We filed objections to
12 specific questions and answers. It's a long deposition.

13 THE COURT: Whose deposition was it?

14 MR. BUZBEE: Michael Yancy.

05:04

15 MR. BROWN: Mr. Michael Yancy.

16 THE COURT: No, no. I mean, who called the
17 deposition?

18 MR. BROWN: Plaintiff called the deposition.

19 THE COURT: It was plaintiffs' deposition?

05:04

20 MR. BROWN: Right.

21 THE COURT: And you don't have any parts that you
22 designated?

23 MR. BROWN: We have. And they've objected to parts of
24 our offer, as well.

05:04

25 THE COURT: So, we're just going to play the

05:04 1 deposition, right?

2 MR. BUZBEE: Well --

3 THE COURT: I'm not going to spend my night going
4 through this deposition. How long is it?

05:04 5 MR. BUZBEE: Our part is 58 minutes.

6 THE COURT: How long is your part?

7 MR. BROWN: About 40 minutes or so.

8 THE COURT: So, we just play the whole thing.
9 Whatever it is that needs to be played, we are going to play it
05:04 10 all at one time unless you want to reserve your portion.

11 MR. GALBRAITH: Could we have an opportunity to make
12 those objections subject to the Court's --

13 THE COURT: You might be able to do it. I guess this
14 is a video. Is it a video deposition?

05:04 15 MR. BUZBEE: It's video.

16 THE COURT: I think we can probably make some of
17 those. If you've got a printed copy and you designated on that
18 copy where your objections are, I generally will read ahead and
19 rule on the record as you approach that particular area. I'll
05:04 20 do that, but you need to get that to me before.

21 MR. GALBRAITH: We filed those of record already. We
22 could produce some more copies tomorrow.

23 MR. BROWN: You mean write it on the transcript
24 itself?

05:05 25 THE COURT: No. The transcript itself is going to

05:05

1 have to show me where your objections are.

2 MR. BUZBEE: I have one transcript --

3 THE COURT: Not just give me -- not just give me a
4 list of designations and I have to go do all that work.

05:05

5 MR. BUZBEE: No, sir. I have one transcript, your
6 Honor, for the Court, to make it easier on you --

7 THE COURT: All right.

8 MR. BUZBEE: -- that has our designations highlighted
9 and theirs highlighted.

05:05

10 THE COURT: But I need the objections, not the
11 designations.

12 MR. BUZBEE: The objections, yeah.

13 THE COURT: And that's the key to it.

14 MR. GALBRAITH: We'll work on that tonight.

05:05

15 THE COURT: All right. So, who is your first witness
16 tomorrow morning?

17 MR. BUZBEE: Tomorrow my first witness is going to
18 be -- is it Vernon Johnson or Brian Johnson or --

19 THE COURT: It's not the deposition?

05:05

20 MR. BUZBEE: Negative.

21 THE COURT: Okay. So, how long will it be before you
22 get to the deposition?

23 MR. BUZBEE: I've got, like I said, five more of those
24 witnesses, about the same --

05:05

25 THE COURT: Okay. So, you got till probably 10:30 or

05:05 1 noon.

2 MR. BUZBEE: Exactly.

3 THE COURT: Yeah. Okay.

05:05 4 MR. GALBRAITH: Could we ask for the identification of
5 at least those first five short ones?

6 MR. BUZBEE: I'll get with him after this, your Honor.
7 Like I said, we're going to work out a deal.

8 THE COURT: Okay. All right, gentlemen. Thank you
9 very much. Have a good evening.

10 *(Proceedings recessed for evening)*

11 * * * * *

12 COURT REPORTER'S CERTIFICATION

13 I certify that the foregoing is a correct transcript from
14 the record of proceedings in the above-entitled cause.

15 Date: January 25, 2010

16
17 /s/ Cheryll K. Barron

18 Cheryll K. Barron, CSR, CMR, FCRR
19 Official Court Reporter
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